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ABSTRACT

This guide on law education is designed for high school students. Objectives are to give a fundamental understanding of Utah law in those areas that may be encountered personally, show how laws are made, and explain what to do if you become involved with the law. This volume is arranged in seven chapters. Topics include: (1) an introduction to Utah street law--what it is and and who makes the law, types of law, the court system, and the role of the lawyer; (2) criminal law--classification of crimes, defenses, and criminal justice process; (3) juvenile law--how a juvenile enters the juvenile justice system, certification as an adult, and what to do with the juvenile; (4) consumer law--public agencies and small claims court, Deceptive Sales Practices Act, repair and estimate fraud, contracts, credit, default and collection practices; (5) family law--getting married and divorced and rights and duties of parents and children; (6) housing law--landlord-tenant relations, mobile homes, home ownership; and (7) individual rights and liberties. Each chapter has an appendix which lists main organizations, agencies, and groups to use as resources in the state of Utah when dealing with questions arising from that chapter's topic; a list of "where you live" questions and answers, and a glossary. (NE)

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PRACTICAL LAW IN UTAH, Second Edition
Utah Supplement to Street Law

Utah State Office of Education
Walter D. Talbot, State Superintendent of Public Instruction
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Instruction

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FOREWORD

Law-related education has become a vitally needed part of the public school curriculum: it emphasizes fundamental issues and concepts in democratic citizenship by focusing upon law and its consequences, the legal processes that facilitate the function of law and the skills needed for making moral decisions. The purpose of this handbook is to provide educators and the general citizenry with a fundamental understanding of Utah law that will enable them to act confidently and responsibly within that legal system.

The legal profession, through the Utah State Bar's Law-Related Education Committee, has demonstrated its support for the project by volunteering the services of the lawyers who wrote and edited this text and arranged for its typing; the Utah State Board of Education likewise supports the efforts of the Utah Law-Related Education Project in making the law more comprehensible and less threatening to the general public and especially to youth.

It is the obligation, and the opportunity, of the youth of today, to use and understand America's tradition of the "rule of law". It is this tradition that keeps us free.

Walter D. Talbot
Walter D. Talbot
State Superintendent of
Public Instruction

PREFACE AND ACKNOWLEDGEMENTS

Street Law: A Course in Practical Law has been used in Utah secondary schools as both a text in law education classes and as a reference book for teachers since early 1977. While Street Law has been a valuable tool in the classroom, it became apparent that a more definitive text on basic Utah law and its procedures in particular would be useful not only for educators in public school and community adult education classes, but for the general citizenry as well. Citizens having an understanding of practical law will realize that the law can be an effective tool in their behalf in certain situations. They will also be better able to avoid and prevent unnecessary problems with the law.

The first edition of Practical Law in Utah published in 1979 was written with the intention of partially fulfilling these needs. This second edition is a result of numerous requests for an up-dated version of the book. It includes answers to the "Where You Live" boxes as found throughout the Street Law text, a more extensive glossary, and a list of main organizations, agencies and groups to use as resources in the State of Utah. It is suggested that you use your own local agencies and organizations (i.e. Division of Family Services, bar associations, county jails, etc.), as many examples listed are for the Salt Lake area. It must be emphasized, however, that this book is not intended to serve as a substitute for advice required of a professional attorney.

No attempt has been made in this volume to treat every area of the law. For example, such subjects as corporations, insurance, international law, tax, estate planning and environmental law are not considered. Some of these subjects do not lend themselves to the brief and general approach used here; others have relatively little practical value for the average citizen.

The Utah Law-Related Education Project at the Utah State Office of Education originated the concept of the supplement but would have been unable to realize its completion without the assistance of members of the Utah State Bar and suggestions from the National Street Law Institute and Judith Billings of the University of Utah Law School. Financial assistance was provided by the Utah

Council on Criminal Justice Administration. The supplement has been endorsed by the Utah Commission on Education for Law and Citizenship, which was established by Governor Scott M. Matheson in May 1978, and is chaired by Robert D. Merrill, Esq.

Special thanks must be extended to Patrick A. Shea, Esq. of the law firm Van Cott, Bagley, Cornwall and McCarthy for organizing and supervising the writing and editing of the text and to his committee of lawyers who donated their time to do that writing. Each chapter designates its author, but because of the many hours they contributed and the gratitude felt by the project chairmen, we offer thanks again to Judge Monroe G. McKay, Judge Ralph R. Mabey, Patricia A. DeMichele, Ross Anderson, Brent Cameron, David S. Dolowitz, Steve Kuhnhausen, Doug Matsumori, Robert D. Merrill, Suzanne Mellor, Ron Nehring, Elizabeth M. Haslam, John Nielsen, William D. Oswald and Dorothy Pleshe.

Contributing to the editing, answering the "Where You Live" questions and developing the glossary were Katherine Astin, Douglas Bates, Barry Gomberg, Nancy Mathews, Linda Oswald, JoAnn Seghini, Suzanne Mellor, and Judge Judith F. Whitmer. A special thank you is acknowledged to Donna Hacker, Dorene Tippet, Laurie Smith, Debbie Zeis, Jean Zitting, and the law firm of Van Cott, Bagley, Cornwall and McCarthy for the typing of this manuscript. We would also like to thank Fred Oswald for photography used on the division pages.

Many staff members within the Utah State Office of Education were instrumental in the final preparation of this manual. Many thanks go to Lee Gray of the Division of Curriculum and Instruction for her creative cover; to Allan Arko for photographs for the division pages, and to Sharon Janke and her publication staff for their cooperation in printing this book.

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The Utah Law-Related Education
Project Staff
October 1981

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CHAPTER ONE

INTRODUCTION TO UTAH STREET LAW*

Few people, even lawyers, realize that law has something to say about everything that a person does -- from living to dying. Most of the time, if we enter into an agreement, we have just about the same understanding of the agreement as the other person with whom we made the agreement. Most of the time we do what we say we will do. Most of the time we don't do things that upset people around us. Most of the time what we do does not interfere with what other people do.

But, if we are careless in resolving the details of our agreements, especially if the agreement is complicated or lasts over a long period of time, we wind up with a dispute with the person. That person can be our parents, our friends or strangers. If we can't settle the dispute ourselves, the law not only decides which version of the agreement is the "correct" one, but it also can order police officers to help the persons on the "correct" side to enforce their agreement.

If a person lies about part of the agreement or just plain refuses to keep his word, the law gets involved. When the innocent party wants help in correcting the problem by forcing the person who doesn't keep their word, such person must go to court or find another solution.

If we dump our garbage in public, if we park our car in the middle of the road, if we make too much noise or if we do other things which interfere with or harm others, the law may insist that we stop, and, perhaps, make us pay something to the person injured. The punishment is meant to make us think twice before we do the same kind of thing in the future.

* The Introduction to this Chapter was written by Judge Monroe G. McKay, United States Court of Appeals, Tenth Circuit. The remainder of the chapter was written by Ralph R. Mabey, United States Bankruptcy Judge and Assistant Professor of Management, University of Utah College of Business, Brent Cameron, Utah State Public Service Commission and William Oswald, Attorney at Law.

The main objectives of the course in Street Law are to make you aware of the main areas of the law that you may encounter in your personal life; and to show you how laws are made. While much of the course involves what to do if you become involved with the law, hopefully Street Law will provide each of you with an understanding of the "rules of the game" sufficient to avoid the expense and pain of running up against the law.

I hope that you will not look on this course just as a means of getting your way. Sometimes we think of our way as our "rights". It is not. Our "rights" also have obligations. By means of rights and obligations, our society tries to give each of us as much room as possible, while still respecting and protecting other's rights. The society must have means to punish anyone who violates your rights or the rights of others.

Finally, if you are like most everyone, sometime or other you will find yourself involved in the formal machinery of the law. This might be with a policeman, an administrator, a lawyer or a judge. If this happens, I believe this course can improve your understanding of the legal process.

A. WHAT IS THE LAW?

How fast is too fast to drive? If a new stereo is a lemon, must the manufacturer replace it? If the stereo shorts out and burns a house down, will the manufacturer be responsible for the damage to the house? If a customer doesn't ask, does a used car salesman have to tell him that the car was in a serious accident and has a bent frame? Is it a crime to write a check on an overdrawn account?

The law is a set of rules and procedures designed to answer these questions fairly for the individuals involved and for society. Naturally, what is fair depends upon the facts of each case. Therefore, part of the law is concerned with the gathering of facts, or evidence, and the weighing of those facts to determine whether they should make a difference in the treatment an individual receives. For instance, if the facts showed that someone purposely wrote a bad check in order to defraud a person, it would be fair for the law to treat them more severely

than someone who accidentally overdrew their account. It might well make a difference if the used car salesman actually lied to a customer instead of just keeping quiet. If the stereo was manufactured in such a way as to make it likely to short out, causing a fire, perhaps the law should treat that manufacturer differently from one who was more careful in the manufacturing of their stereos.

Because the facts are often conflicting and difficult to figure out -- after hearing the evidence in court a jury may spend hours in discussion and argument trying to determine what the true facts are. And, unfortunately, even when the facts are clear, it's sometimes hard to make a rule of law to apply to those facts.

For instance, suppose a gas station attendant is robbed. If the facts show that the robber threatened the use of a gun, perhaps the penalty should be greater than if the robber did not. It is that way in Utah. But, suppose what looked like a deadly weapon to the gas station attendant was only a toy pistol held by the robber. Should the robber still suffer the greater punishment? The answer is "yes." Under Utah law, the robber would be guilty of "aggravated robbery," not just "robbery," even though he used just a toy pistol. Perhaps the reason this seems fair is because the gas station attendant would be in just as much fear for his life at having a toy gun which looked real pointed at him as he would having a real gun pointed at him. On the other hand, there seems to be a smaller chance of danger and injury if the robber uses only a toy gun. Do you think the Utah law is fair?

Because it is difficult both to determine the true facts and to determine the fairest rule to apply to the facts, law libraries are stacked to the ceiling with thousands of books containing the judgment of legislatures and judges on millions of questions of law. Clearly, the problem of making and applying the law in a consistent pattern is one of the hardest and most important problems faced by society.

Problem No. 1

Appleby, standing under a "No Smoking" sign at a local gas station, is pumping gas into his own car. He lights a cigarette which causes the gas station and half the city

block to blow up. Under certain circumstances in Utah, it is against the law to cause a catastrophe such as an explosion, fire, or the collapse of a building. If the catastrophe is caused knowingly, it is a serious crime or a felony (carrying a maximum punishment of more than one year); if the catastrophe is caused recklessly, the crime is a less serious misdemeanor (carrying a maximum punishment of less than one year); if the catastrophe is caused only negligently or carelessly or inadvertently, it would be no crime at all under this particular law. Is Appleby guilty of a felony or a misdemeanor under the catastrophe law in Utah, or is he innocent?

B. WHO MAKES THE LAW?

The people, their elected officials, the judges and the administrative agencies make the law within the guidelines laid down by the state and federal constitutions.

The law may affect anything we do, and the making of completely fair laws is extremely difficult, if not impossible. Therefore, it is very important that the laws be made by the best people available.

1. The People's Involvement in the Making of the Law

Fundamental in our form of democratic government is the right of the citizens to participate in the making of law. Constitutionally guaranteed rights to vote, to seek and hold public office and to have access to the judicial system are the cornerstones of citizen involvement in government. Other methods of citizen involvement include citizen initiative, referendum, letter writing, conversations with elected or appointed officials, demonstrating, picketing and lobbying. These methods are founded in the First Amendment guarantee of free speech and the right to petition the government for a redress of grievances.

The opinion of the people, either in groups or individually, is almost always a major factor in the formulation of laws (including the rules and regulations of governmental agencies). Elected officials are, of course, dependent upon the vote of those whom they represent and for that reason usually go to great effort to discover how the majority of their constituents feel

about important public issues. It is not surprising, therefore, that almost all laws and regulations enacted by Congress, the state legislatures and governmental agencies are at least in part the result of lobbying by individuals or groups interested in their enactment, amendment or defeat.

Public opinion can, and often does, affect the implementation and interpretation of existing laws and regulations by governmental agencies. Local examples of such public opinion are to be found in the debate which has swirled about the proposed Salt Palace expansion project, the annexation of Emigration Canyon to Salt Lake City, the Intermountain Power Project, and the rates established for utilities.

Citizens can also influence the method by which their tax dollars are spent. Participating in the public meetings held by city and county officials, school districts and boards, zoning and planning commissions, and the like, can greatly influence priorities for specific projects, e.g. where a park should be established, the curriculum in the schools, commercial or residential development in neighborhoods, and a variety of other subjects.

While administrative agencies often take public opinion into consideration in making their decisions, the judicial system (the courts) at least in theory does not. They interpret the law as enacted by the legislative body, or based on prior court interpretations and are supposed to be isolated from public or citizen pressures. The use of a jury, of course, does bring citizen involvement into the judicial system to determine questions of fact. Questions of law are handled by the Judge. This citizen involvement is much different from attempts to influence the making of law by legislative or administrative agencies.

Lobbying is a specialized form of citizen involvement in the lawmaking process. A lobbyist is a person who contacts members of the lawmaking body in an attempt to influence the making of law. Most lobbyists are official representatives of organizations such as labor unions, community or business groups, consumer groups, service organizations and the like. Many lobbyists receive compensation for their efforts while others receive no

pay. Among paid lobbyists at the Utah State Legislature are those representing the Utah Manufacturers Association, the Utah Education Association and organized labor. Unpaid lobbyists would include representatives of the Utah Symphony and the arts generally. In Utah, paid lobbyists must register with the Secretary of State, pay a small fee and disclose their employers' identities.

Lobbyists perform a very valuable function by providing information to legislators on how pending legislation will affect various segments of society. Lobbyists provide expert advice and information which, otherwise, the legislator might not get. Legislators rely heavily on lobbyists to supplement the information provided by legislative research staffs and committee reports. A good lobbyist must obviously be very knowledgeable in his or her field, have a command of parliamentary procedure and legislative or agency rules, and become acquainted personally with as many lawmakers as possible.

An example of a current issues on which there is heavy lobbying is the deployment of the MX Missile System. Groups both within and outside government are using extensive resources to persuade the President and the Congress of their views and preferences on the necessity of deployment as well as where and how the system should be deployed. The lobbying effort is being done by citizen groups like the MX Information Center and industry groups interested in the contracts involved in the construction and deployment of the missile. In addition, there is disagreement between different governmental departments, such as the Department of State and the Department of Defense, each trying to pressure and persuade (lobby) for their preference as to ultimate decision.

Here in Utah groups opposed to the passage of the Equal Rights Amendment (the anti-ERA lobby) have been remarkably well organized and effective in advancing their point of view.

In summary, the people's right to participate in and influence the making of law, as well as the interpretation and implementation of law, is an important tool to protect valuable rights and privileges and to make the citizen's views known on particular issues.

2. Elected Representatives

Elected representatives of the people, who are charged with the responsibility of carefully studying proposed laws and determining their overall fairness, enact many of the laws in the state of Utah.

The Utah State Legislature meets for twenty days in even-numbered years in a budget legislative session and sixty days in odd-numbered years in a general legislative session to enact laws of general state interest. The state legislature also determines the law-making authority which local governments shall have (cities and counties).

County and city commissions or city councils in Utah are elected by local citizens to pass and administer laws on a local level. Such laws would include zoning, building codes, minor offenses, traffic offenses on locally maintained roads, and other matters of local concern.

The laws enacted by the state legislature are called statutes. Those enacted by city and county governments are called ordinances. Administrative agencies create regulations or rules.

3. Administrative Agencies

Elected representatives frequently pass laws which create administrative agencies staffed by appointed, not elected, officials to administer technical and detailed areas of law. For instance, the Utah Air Conservation Committee makes legal rulings which determine what individual companies must do to improve or maintain air quality. Local zoning commissions, under the supervision of county and city elected representatives, determine where and how homes and businesses will be built. The Utah Public Service Commission determines what rates shall be charged for gas and electricity. The Utah State Road Commission determines where stop signs and stop lights will be placed on state-controlled roads and what the speed limits shall be on those roads. The Industrial Commission of Utah, together with agencies working under it, establishes and administers safety and health rules governing work places within the state.

The rules passed by administrative agencies may be changed by the legislature. In the case of each administrative agency, elected representatives have outlined the responsibilities and authority of that agency. Within that outline, however, many administrative agencies have broad power to pass rules and regulations, to judge who has broken those rules and regulations, and to punish people who break those rules and regulations. In some cases the judgment of a regulatory agency may be reviewed by a court.

While this book deals principally with the laws enacted by elected officials and the people and interpreted by the courts, it must be recognized that administrative agencies are the source of the largest number of laws (or rules and regulations) in the country.

4. The Constitution.

Underlying all statutes, ordinances and regulations are the provisions of the United States and state constitutions which define basic governmental organization and procedures (e.g., who can vote, how the legislature or congress shall function, what power the governor or president shall have) and which preserve basic individual rights (e.g., freedoms of speech, press, religion). No other state law may conflict with the state constitution, and even the state constitution may not conflict with the U.S. Constitution. For that matter, all state law must give way to conflicting federal law so long as that federal law is "constitutional," or consistent with the U.S. Constitution. The state constitution may be amended only by a vote of two-thirds of the state house of representatives and senate and by a majority vote of the people.¹

¹Article VI of the United States Constitution reads:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

a. The Supremacy of the United States Constitution

The United States Constitution is the supreme law of the United States. If the United States Congress enacts legislation contrary to the provisions of the United States Constitution, the courts may declare the legislation invalid. The exercise of such judicial review is a necessary part of any constitutional system; without it, Congress would be free to pass laws that do not conform to the guaranties and protections of the United States Constitution.²

Likewise, the United States Constitution is supreme over the laws of the States. State judges must look not only to State laws in making their decisions, but also to the United States Constitution. If there is any conflict between the two, the United States Constitution must prevail. Further, if there is a conflict between a State court and the United States Supreme Court regarding the interpretation of the United States Constitution, the

²In his famous decision in 1803, on the power of the courts to exercise judicial review, Chief Justice Marshall wrote as follows:

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act. Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

Marbury v. Madison,
1 Cranch 137 (1803).

interpretation of the United States Supreme Court must prevail.³

The supremacy of the United States Constitution and of the interpretation of the Constitution by the United States Supreme Court has not always been an easy principle for some people to accept. Former Chief Justice Ellett of the Utah Supreme Court has expressed the jealousy of many who believe in a broader concept of states' rights as follows:

The United States Supreme Court, as at present constituted, has departed from the Constitution as it has been interpreted from its inception and has followed the urgings of social reformers in foisting upon this Nation laws which even Congress could not constitutionally pass. . . . As a result of the recent holdings of that Court, the sovereignty of the states is practically abolished, and the erst while free and independent states are now in effect and purpose merely closely supervised units in the federal system.

Dyett v. Turner,
431 P.2d 266, 267 (Utah 1968).

³For example, in 1974 the Utah Supreme Court held as conforming to the United States Constitution a Utah statute extending the period of minority for males to age 21 and for females to age 18. Stanton v. Stanton, 517 P.2d 1010 (Utah 1974). The United States Supreme Court reversed the Utah Supreme Court, stating that under the equal protection tests defined by it in previous decisions, the distinction in determining the age of majority for males and females is violative of the Equal Protection Clause of the United States Constitution.

Stanton v. Stanton
421 U.S. 7 (1975).

Notwithstanding attempts at variation, the United States Constitution is the supreme law of this nation⁴, and the United States Supreme Court is the final decision maker of federal constitutional issues.

b. The Role of State Constitutions and Legislation

Although the United States Constitution is the supreme law of the land, the States are reserved substantial power. The Tenth Amendment to the United States Constitution reads as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Because of the reserved powers of the States, they are free to make and amend their own constitutions, so long as they do not conflict with the United States Constitution.

The States are free to broaden the guarantees provided to their citizens under the United States Constitution. For example, even though the due process clauses of both the United States Constitution and the New York Constitution are almost identical,⁵ the highest state

⁴Article I, Section 3 of the Constitution of the State of Utah recognizes the principle as follows:

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

⁵Article I, Section 6 of the New York Constitution reads as follows:

No person shall be deprived of life, liberty or property without due process of law.

The Fourteenth Amendment to the United States Constitution states in part as follows:

[N]or shall any State deprive any person of life, liberty or property, without due process of law.

court in New York and the United States Supreme Court have reached much different results under similar fact situations. The United States Supreme Court has held under the Due Process Clause of the United States Constitution that contact visits of pretrial detainees in jails may be constitutionally prohibited. Bell v. Wolfish, 441 U.S. 520 (1979). Under the similar Due Process Clause of the New York Constitution, the Court of Appeals of New York (the highest court of New York) has held that contact visits for pretrial detainees may not be prohibited. The court discussed the relationship between the similar provisions of the United States and New York constitutions as follows:

We have not hesitated when we concluded that the Federal Constitution as interpreted by the Supreme Court fell short of adequate protection for our citizens to rely upon the principle that that document defines the minimum level of individual rights and leaves the States free to provide greater rights for its citizens through its Constitution, statutes or rule-making authority.

Cooper v. Morin,
424 N.Y.S.2d 168, (1979).

The states may not alter federal constitutional law, but they are free to provide greater protections for their citizens than provided by the United States Constitution. The greatest importance of state constitutions and state legislation lies in the greater protections offered by them as compared to the protections of the United States Constitution and federal legislation.

5. Judges or Courts

The courts make law in two very important ways: First, if a dispute arises concerning the meaning of a statute, ordinance or regulation, the people involved in the dispute may very well go to court to find out the meaning of the law.

For instance, both the U.S. Constitution (Fifth Amendment) and the Utah Constitution (Article I Section 12) provide that no person, in any criminal case, shall be compelled to be a witness against himself or to give evidence against himself. What does this mean? Suppose

the prosecutor wants the suspect to provide a hair sample, a urine sample, a blood sample, a fingerprint sample. Can the suspect refuse on the grounds that he doesn't have to give evidence or testify against himself? Suppose the prosecutor wants the suspect to dress up in clothes similar to those worn by the person who committed the crime. Can the suspect refuse for the same reasons? Suppose the suspect gives evidence or testifies against himself simply because he didn't know that the constitutions gave him a right to be quiet. Can he prevent the prosecution from using the evidence he gave without being warned of his right to remain silent? None of these questions is answered by the constitutions. The Fifth Amendment says, "No person . . . shall be compelled in any criminal case to be a witness against himself" The Utah Constitution says simply, "The accused shall not be compelled to give evidence against himself. . . ." It is up to the courts to determine the exact meaning of those provisions. This determination is made during the process of trial and appeal as will be explained later. Once the court has determined the meaning of a law and all appeals have ended, that meaning is just as much a part of the law as the words which were enacted by the legislature.

Second, the courts make law by deciding disputes between people in areas where no statutes, ordinances or regulations apply. If, for instance, Appleby and Burns are involved in an automobile accident, there may be a traffic statute which determines who gets the ticket. But in many states there is no statute to say who has to pay to fix the automobiles. If the case ends up in court, the court in these states would apply a rule of law which it has developed over the decades to determine which party pays. Most likely, the rule of law which the court would apply is that of "negligence," which says, in this case, that one person who causes an automobile accident because he did not use reasonable care is obligated to pay the other party the amount of his damages resulting from the accident. This legal rule of negligence is part of a body of judge or court-made law known as "common law." That is, over the years the courts have decided many cases involving accidents. A common thread through these cases is the judge's decision that one who causes an accident because he is careless is "negligent" and liable to pay the damages of the victim. This consistent thread of reasoning is the common law. It isn't written in the book; it is simply the total wisdom of many judges'

decisions. Years ago, before the legislature had enacted so many laws, many of the laws governing our conduct were part of the common law. Today, some of the most important laws in the areas of negligence, fraud, slander and libel, liability for dangerously defective consumer products (perhaps including the stereo discussed earlier) and many others are still judge-made or common law. However, if the legislature does not approve of the common law, it can enact a statute which changes the common law.

Most of the rules of the common law have been developing for decades and centuries through the system known as judicial precedent. Suppose Appleby sold a book to Burns for one dollar. Suppose Burns bought it and then opened it only to discover that there were no words on the pages. If Burns sued Appleby to recover his one dollar, would he win the case? If this were the first case of its kind ever to arise, the court would have to reason from the facts for the fairest solution. It might reason that Appleby should have told Burns about the defect in the book and, therefore, should return the dollar. It might, on the other hand, reason that Burns should have inspected the book before buying it, which he could easily have done, and, therefore, since he didn't, he is stuck with it. If the court should decide against Burns, the court's decision, along with the decisions of hundreds of other courts, might be published in a law book. When a similar case arises, the judge would likely read about the older case and consider it very valuable in deciding the new case, since it is only fair to decide similar cases alike so that people can predict the consequences of their actions. By deciding the new case as the old case was decided, the judge would be following "precedent."

Suppose the new case is a little different from the old in that the defective book being sold for one dollar is wrapped in the original cellophane wrapping and cannot be inspected by Burns. In this case, the judge might decide that the old precedent doesn't apply, since Burns could not have inspected the book in the new case to learn that the pages were blank and, therefore, Appleby should have told him about it and should now be required to refund the dollar. If this is the decision of the new case, it will itself become a precedent for future situations of similar facts.

Suppose that even a third case arises in which the defective book is wrapped in cellophane but is sold by Appleby for only twenty-five cents. In looking for guidance, the judge will have two precedents to choose from, one in which Appleby won and the other in which Burns won. Perhaps the third judge will determine that, since his case is identical to the second case except that the price is twenty-five cents instead of one dollar, his case should be decided as the second case was. On the other hand, perhaps the judge will reason that, because the price was so small, Burns should have been put on his guard that the book might be defective and he should have at least inquired about it. Since he didn't, perhaps he shouldn't be able to recover his money. By this reasoning, the third judge will establish a third precedent.

As each succeeding case arises, the judge will look at the earlier cases or precedents. If any is identical to his own case, the decision should be easy. If the facts of his case are a little different from all of the precedents, however, the judge will pick and choose among them to find the most helpful legal reasoning and the fairest outcome. By this process the system of common law develops.

Obviously, earlier court decisions, or precedents, are very important elements of the law. If a lower court knows that the higher court above it has established certain precedents, the lower court will follow those precedents or else suffer the reversal of its decisions when they are appealed to the higher court. If the judge wishes to ignore one of these precedents, he must explain how his case is different in some important respect.

The common law system of precedents allows for growth, flexibility and consistency, as rules tied together by a consistent thread of precedent are flexible enough to allow innovations when new fact situations arise.

If the purpose of law is to achieve fairness in our dealings, then one might ask why there is such a variety of lawgivers (makers of law) as listed in the preceding pages. The answer is not simple and may be tied to tradition, among other things. But it may safely be said that the people and their elected representatives provide a sense of the community standards of fairness.

Administrative agencies provide the fairness which flows from being able to carefully consider each case, even though it may be technical and complicated. The courts provide a continuity which is not found among elected representatives, and they embody a dispassionate and reasoned judgment less influenced by pressure groups, lobbyists, and by electioneering than that of elected representatives. Thus, the present combination of lawgivers has much to recommend itself.

C. TYPES OF LAW

Laws may be divided into two large groups: criminal and civil.

1. Criminal Law

Criminal laws are those which prohibit conduct offensive to society as a whole. In a criminal case the people pay their government officials to investigate the matter, and they pay a government attorney, the prosecuting attorney, to bring the criminal to trial and to see that he is fined or placed behind bars or otherwise punished. One who commits a crime commits an act against the people, and the people, through their representatives, see that the criminal is brought to justice. Therefore, the title of a typical criminal legal case in Utah would read "The State of Utah v. Appleby." (Appleby is the defendant.) (See Chapter 2 on Criminal Law.)

2. Civil Law

On the other hand, sometimes people simply refuse to honor a contract with someone else or they negligently injure someone else. In these cases the state does not prosecute the erring party. However, the injured party may sue the offending party in court and claim that some element of the civil law has been broken. If the injured party proves his case, the judge will not fine the losing party or put him behind bars, but he may order the losing party to pay the injured party an amount necessary to compensate him for his injuries. These types of cases are civil cases. The title of a typical civil case would read "Appleby v. Burns." (Appleby is the plaintiff; Burns is the defendant.) The state is not directly involved as it is in a criminal case. It is the legislature which

determines the difference between civil and criminal law. An example will illustrate this difference.

Suppose Appleby, while driving 65 miles an hour on the freeway, runs into Burns, who is driving properly. Suppose further, as a result of the accident, Burns is killed. Appleby has committed the minor crime of speeding, and the state may impose a minor fine as a result. But it is probably no crime for Appleby to have caused Burns' death in these circumstances, according to the state legislature. However, Burns' family may sue Appleby for negligence under civil law and recover money from Appleby to help compensate them for Burns' death.

Suppose, again, that Appleby is both drunk and speeding when he collides with Burns and causes his death. The state legislature has said that such conduct is particularly bad and that the causing of death as a result of such conduct should, therefore, be criminal. As a result, Appleby will now be prosecuted by the state for the crime of automobile homicide. At the same time, Burns' family may still sue Appleby under the civil law and recover damages for his death.

Because of the greater seriousness of the latter crime, Appleby will have greater protections if he is prosecuted. He will have a right not to testify against himself. Also, the prosecution will have the burden of proving Appleby guilty beyond a reasonable doubt. If Burns' family sued Appleby in a civil case, the family would have the lighter burden of proving their case by a simple preponderance of the evidence (more than fifty percent).

Problem No. 2

Appleby buys a stereo from Burns but pays for it with a bad check, written on an account which Appleby knew had been closed over a year. Should Appleby's conduct be classified as a crime? Should Burns be able to sue Appleby under civil law and recover the amount of the bad check?

D. THE COURT SYSTEM

1. Trial and Appellate Courts

In either a criminal or civil case, the people involved present their sides of the matter at a trial held in a trial court. The facts of the case will be decided in the trial court after all of the witnesses and all of the evidence has been presented. When there is a jury (which ordinarily may be requested by either party in a civil case or by the defendant in a criminal case), the jury will decide all questions of fact. If it's not a jury trial, the judge will decide the questions of fact. The judge will always decide the legal questions (Questions of Law) arising during the trial.

For example, suppose the jury hears Appleby testify that he was not drunk and speeding at the time of the accident, but hears Officer Wiggins testify that skid marks indicated Appleby was speeding and that he smelled liquor on Appleby's breath but couldn't give him a blood test because Appleby was himself injured in the accident. The judge must sort out this evidence and decide what the law is and instruct the jury in the law. The jury will then apply the law to the facts to decide whether Appleby is guilty of a crime (in a criminal trial) or liable to pay damages (in a civil trial). If, in a criminal trial, the judge tells the jury that no crime has been committed unless Appleby was drunk, then the jury will find Appleby innocent unless it is convinced beyond a reasonable doubt that Appleby was, in fact, drunk. If, in a civil trial, the judge tells the jury that Appleby is liable to pay damages if he were drunk or if he were speeding, then the jury will find Appleby liable if it is convinced that Appleby probably (more likely than most) was either drunk or speeding.

If Appleby loses, he can appeal the decision to an "appeals" or appellate court (Utah Supreme Court. Appleby's lawyer may argue that the judge made a mistake in telling the jury what the law was or in making other legal decisions such as deciding what evidence to allow the jury to hear. The appeals or appellate court will not hear any witnesses or receive any evidence. The appellate judges will simply listen to the lawyers' arguments, review the record of the trial and decide if the law was correctly applied. Their decision and the reasons for it will be recorded and used as precedent in future cases.

Appleby would not usually be able to appeal just because he felt the jury was wrong in deciding that he was drunk. This is a question of fact. Appellate courts will usually hear only disputes on questions of law. They will accept the facts as determined in the trial court during a trial.

2. Utah Courts

Each state has courts that hear civil and criminal cases based on state laws. There are also federal courts in each state which hear federal, civil and criminal cases.

In the Utah court system, the circuit courts may decide all cases dealing with county or municipal ordinances. The circuit courts may also deal with all misdemeanors and give punishments up to a \$1,000 fine and one year in jail. Civil claims up to \$5,000 may be heard.

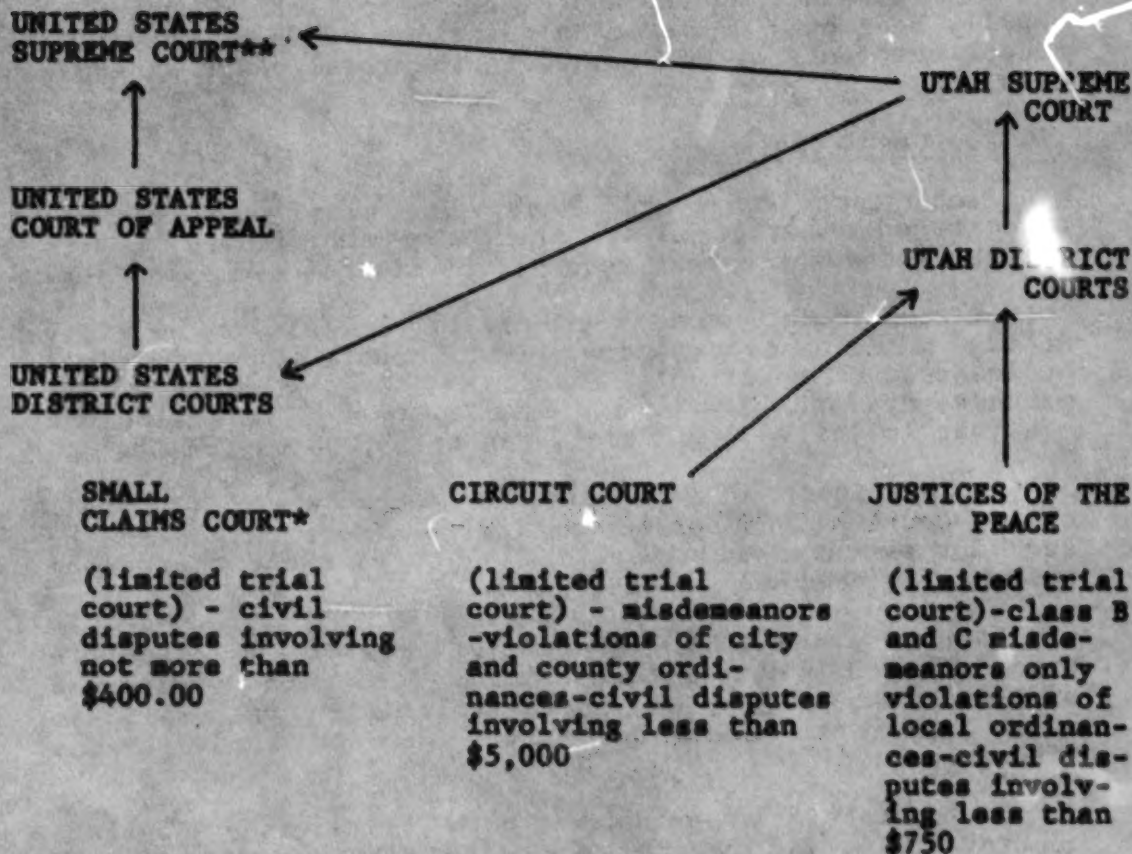
A department of the circuit court known as small claims court allows persons and corporations to sue and be sued for amounts not exceeding \$400. In these courts, no attorney is needed by either party.

In some areas of the state, justices of the peace are used. They may decide cases arising under the ordinances of their towns. They may hear civil claims up to \$750 in some types of cases and may rule on less serious misdemeanors.

Utah district courts are both trial and appellate courts. As trial courts, the Utah district courts have the power to decide any civil case and criminal cases dealing with felonies under state law. The district courts also act as appellate courts by ruling on appeals from the circuit courts or justices of the peace.

The Utah Supreme Court is an appellate court that decides appeals from the district courts. Sometimes its decisions may be appealed to the U.S. Supreme Court or a United States District Court.

Diagram of Courts



*The justice of the peace courts have no court reporter to write down all the testimony taken at trial. As a result, appeals taken from these courts result in a whole new trial (trial "de novo") in the appellate court -- the district court -- as though the original trial had never taken place. Appeals from small claims courts are handled in the same manner as appeals from justice of the peace courts, except that the plaintiff cannot appeal if he loses in small claims court.

**The U.S. Supreme Court does not accept all of the cases urged upon it. It chooses to hear only the most important cases.

E. THE ROLE OF THE LAWYER

The lawyer plays an indispensable part in the American legal system, so much so that the private lawyer is considered an officer of the court itself. Three roles of the American lawyer stand out as particularly significant:

1. The Lawyer as an Advocate in the Adversary Court System

Suppose a judge asked someone to write an essay listing all of the reasons why a father should not have to pay for the damage caused by his seventeen-year-old son, who crashed the family car into a parked Rolls Royce. He might do a halfhearted job on his essay because he disagreed with the position he was asked to defend or simply because he didn't think the assignment was very important. But, suppose he was the father whose son had crashed the family car into a parked Rolls Royce. Wouldn't he be much more likely to work hard on his essay and make it as persuasive as possible? If the judge had the benefit of an essay from the father who really didn't want to pay and an essay from the owner of the Rolls Royce who really wanted the father to pay, it stands to reason that the judge would have before him the best arguments on both sides of the question. As a result, the judge could make a better decision.

When a legal controversy does arise, the judge sits in the middle and lets both sides make their best arguments. Naturally, the arguments presented to him will often include mention of earlier, similar cases or precedents, which might help the judge make a decision. If one side overlooks a strong legal argument, the judge might help out, but the judge cannot be expected to think of all of the best arguments on his own. His job is to listen and choose between the arguments presented to him. This is known as the "adversary system": opposing parties put their best foot forward and the judge decides which side has the law in its favor, while the jury, of course, decides which side has the facts in its favor.

Under the adversary system the judge will allow a witness to give hearsay testimony (testimony about something the witness has heard but not directly observed, which is normally not allowed) unless the opposing party objects. It is, in large measure, up to each adversary to

protect its own position by offering such evidence and legal argument as it wishes.

Whether or not judge and jury reach a just decision depends largely upon whether or not opposing parties do their jobs well. Lawyers are the individuals who present the evidence and the legal arguments of opposing parties to the court. Without lawyers well versed in the law and the facts of a case, the court system will not work. If, for instance, a person went to court without a lawyer and overlooked an important legal or factual argument in his favor, he might lose the case.

2. The Lawyer as a Defender of the Accused Criminal

An accused criminal is "presumed innocent until proven guilty." In order to give this statement real meaning, part of a lawyer's role in the adversary system must include his responsibility to represent even the most unpopular criminal defendant in order to see that he receives a full and fair trial if he desires one. In this role the lawyer must defend his client to the best of his ability. If there are honest legal arguments or objections to be made for his client, the lawyer must make them. Only in this manner can the adversary system operate properly to protect the unpopular as well as the popular defendant. Sometimes cases are made so sensational by the newspapers and television coverage that the public assumes the accused criminal is guilty before a trial is held. This is called trial by press.

3. The Lawyer as Legal Counselor

Relatively few legal problems end up in court. Most lawyers spend most of their time counseling their clients on legal questions in order to avoid or resolve legal difficulties. If two people decide to become partners in a lawn-mowing business, for example, will the partnership own the lawnmower just because it is used in the business? If one partner dies, will the other have to dissolve the business and pay the dead partner's spouse her half of the assets? If a partner carelessly drives the partnership pick-up truck over a pedestrian, will the other partner be liable? If a customer claims they did a poor job and the partnership disagrees, is there an easy way to settle the dispute? If a customer doesn't pay on time, what will the partnership be able to do to collect

the bill? How will the partnership and the partners be taxed? Would it be wise for the partners to form a corporation? If one spouse of a partner wants a divorce, will he or she be entitled to part of the partnership? These and many other legal questions are best (and most cheaply) resolved with the help of a lawyer before they become a problem.

Every person who is about to take a step which may raise legal questions (such as signing a contract or forming a partnership) should consider consulting a lawyer first in order to avoid expensive and unfortunate problems later (preventative medicine).

4. Hiring and Firing a Lawyer

People are entitled to shop just as carefully for a lawyer as they would for any other important service.

As traditional restraints on lawyer advertising break down, the newspaper, yellow pages and other advertising methods will describe more which areas of law lawyers work in and what they charge for some routine services. One should keep in mind, however, that media advertising does not, as yet, help in deciding which lawyer is the best.

Martindale-Hubbell, a publication available at most public libraries, law libraries and the Utah State Bar office, lists many lawyers in every state together with a general judgment, based partially on their years of experience, as to their competence. These listings also show lawyers' areas of practice and representative clients. Some of the information in this publication (biographical information, areas of expertise and representative clients) is paid advertising by the lawyers themselves, but it may provide assistance in selecting a lawyer.

The Utah Bar Association, to which all lawyers in Utah belong, provides a telephone referral service by which the Bar will put anyone in touch with an attorney who practices in the legal area needed at a minimum cost. The Bar referral system makes no judgment as to which lawyer is best qualified or most appropriate.

Whatever procedure is used in choosing a lawyer, the prices and quality of service may vary. At any time, one

lawyer may be too busy to handle the problem timely. One must feel good about their lawyer as they would about their doctor. There are many factors to consider in choosing a lawyer and care must be taken to choose the one best suited for your needs).

5. Paying a Lawyer

Lawyers usually charge clients by way of a flat fee, a contingent fee, an hourly fee or a retainer.

For routine legal work such as uncontested divorces, simple wills and adoptions, many lawyers charge a set fee. A client should compare prices for these services since they may vary widely.

Where a client wishes to sue to recover money damages (such as a suit against a negligent driver who caused an auto accident), many attorneys charge a contingent fee. Under such an arrangement, the client pays only for the actual out-of-pocket expenses (court filing fees, travel expenses, discovery costs) until the case is concluded. If the case is concluded successfully, the client pays his lawyer a percentage of money won (usually one-third or, if the case is appealed, more). If the case is lost, the lawyer receives only his out-of-pocket expenses. The size and terms of contingency fees also vary from lawyer to lawyer. The contingent fee allows persons who otherwise could not afford a lawyer to go to court to protect their rights, although it may also result in an unusually large payment to the lawyer.

For the typical legal problems such as contract drafting, legal counseling, defending a lawsuit, and so forth, many attorneys simply charge for the time they spend on the project. Such hourly fees may vary between \$25.00 an hour and \$100.00 an hour. Hourly rates may depend in part upon the prominence of the lawyer and the difficulty of the work. Typically, senior partners in a law firm charge much more for their time than do younger, less experienced, associates in the same firm.

For on-going legal counsel, a lawyer and client may decide upon a retainer, that is, a fixed (usually monthly) legal fee for which the lawyer performs all usual and necessary legal work required by his client. Businesses often pay lawyers a retainer to oversee their legal problems.

Legal insurance plans are also available to many people and may be investigated by contacting one's employer or the Utah Bar Association.

6. The Lawyer-Client Relationship

Once a lawyer has been hired, the client may expect from him prompt, loyal, honest and accurate service. Clients sometimes do not understand fully the work their lawyer is doing. In fact, most lawyer-client disputes arise because of lack of communication. A client should feel free to ask his lawyer for reports and to ask questions as they arise. The lawyer should keep the client informed and explain what is being done for him, but the client should also ask questions of the lawyer when he does not understand what is happening and should give him instructions and directions when they are appropriate.

Since a lawyer is an officer of the court and a member of the court-supervised bar association, a client may direct any complaints to the bar association, which will investigate them and attempt to work them out. Ultimately, the Utah Supreme Court has authority to discipline all lawyers who practice in Utah and to resolve difficulties not settled by the bar association. Lawyers, like physicians, are subject to suit for malpractice.

In our increasingly complex society, it is to the citizen's advantage to understand the role the lawyer plays and what he may be able to do to assist the citizen with legal questions and problems.

APPENDIX

Organizations to Know--Chapter One

Utah State Bar
425 East 1st South
Salt Lake City, Utah 84102
531-9075 or 531-9077

Office of the Court Administrator
Fifth Judicial Circuit Court
Salt Lake Department
451 South 200 East
Salt Lake City, Utah 84111
535-6926

Office of the Governor
210 State Capitol Building
Salt Lake City, Utah 84114
533-5231

Office of Legislative Research
436 State Capitol Building
Salt Lake City, Utah 84114
533-5481

Office of Legislative General Counsel
405 State Capitol Building
Salt Lake City, Utah 84114
533-6581

Office of the Legislative Fiscal Analyst
410 State Capitol Building
Salt Lake City, Utah 84114
533-5406

Utah State Public Service Commission
330 East 400 South
Salt Lake City, Utah 84111
533-5511

Utah State Department of Transportation
4501 South 2700 West
Salt Lake City, Utah 84120
965-4104

Industrial Commission of Utah
350 East 500 South
Salt Lake City, Utah 84111
533-6411

Utah State Supreme Court
332 State Capitol Building
Salt Lake City, Utah 84114
533-5071

Small Claims Court
Fifth Judicial District
451 South 2nd East
Salt Lake City, Utah 84111
535-6902

Utah Legal Services, Inc.
352 Denver
Salt Lake City, Utah 84111
328-8891

Salt Lake County Clerk's Office
P.O. Box 1860
240 East 4th South
Salt Lake City, Utah 84110
535-7541

Chapter One

INTRODUCTION TO UTAH STREET LAW

"Where You Live" Questions and Answers:

1. Where and how do you register to vote in your community? Is there a residency requirement for state and local elections? Where do people in your area go to vote?

Each county is divided into numbered voting districts. Elections are run by the county clerk's office in each county. The size of the county dictates the services available through that office. For example, in the larger counties there is an election department that is part of the county clerk's office. Counties also have the option to allow people in the county to register by mail. To check on the organization in your county call the county clerk's office.

Each voting district in the state has a designated registrar. Registration days and locations of the registrar are published or posted. You may register to vote on scheduled, published registration days or at any time up to twenty days prior to an election in the county clerk's office. During the twenty days prior to an election, you must register with your voting district registrar on specific published or posted registration days.

To register to vote, you must prove residency within the state for thirty days prior to an election. If you move to a new voting district, you must change your registration to that district. Your name is automatically removed from the voter registration rolls if you fail to vote in four consecutive general elections.

Absentee ballots are available through the county clerk's office. You may visit the

county clerk's office up to fifteen days before the election, prove that you are registered, receive a ballot and cast it to be counted after the scheduled election. If you are out of state, you may write and request a ballot. It, too, will be counted with all other ballots if it is post marked before the election. This request for an absentee ballot must contain your full legal signature.

2. What special interest, pressure, or lobbying groups exist in your state? On behalf of what issues or causes do these groups lobby? What techniques do they use?

Many lobbying groups exist in any state. Some are long standing and some meet the needs of special temporary causes. Long standing groups might be the Utah Education Association (UEA) which represents the teachers of the state or the Utah Taxpayers Association. Special issues are addressed by organizations such as the League of Women Voters or the State Parent Teacher Association. An example of a special interest group would be parents of gifted children. All of the groups listed above try to represent a special interest through lobbying members of the legislature. They attempt to inform and persuade legislators that the groups they represent have special needs or need special consideration in terms of funding or laws.

Other ways in which these groups affect the community is through the media. By affecting public opinion, they can often affect the legislators.

3. What are the major departments or agencies of your state government? How are they organized and what do they do?

A chart outlining Utah State government's main departments is available through the

Office of Legislative Research, phone
533-5481.

4. What courts exist in your community? What kinds of cases do they handle? How are appeals handled in your state? What is the highest state court and where is it located?

The Utah court system is described in the Introduction chapter of Practical Law in Utah. The Utah Supreme Court is the highest court in Utah, and it is located in the State Capitol Building in Salt Lake City.

5. How are jurors selected by the courts in your community? How many persons are on the jury in a civil trial? In a criminal trial? Is a unanimous verdict required in a civil trial? In a criminal trial?

Jurors in Utah are selected by a computer according to a random selection procedure. All registered voters are considered in the selection process. Once a name has been selected, a questionnaire is sent to the prospective juror. On the basis of this questionnaire, the court determines whether or not the person is eligible to serve. In order to serve, one must live in the county for which service is requested; be a citizen of the United States; read, speak and understand the English language; never have been convicted of a felony; have no physical or mental disabilities that would prevent service; not be on active duty in the military; and not have served on jury duty in the last two years.

A civil trial requires eight jurors and an agreement of verdict in six of the eight, or a three-fourths majority. If the trial is expected to be lengthy, an alternate will be selected to insure a valid trial if one of the regular jurors should be unable to

complete the trial due to personal illness or emergency.

A criminal trial can have eight or twelve jurors. In all trials of capital offenses (an offense that could receive the death penalty), there must be a jury of twelve members. Again, if the trial is expected to be lengthy, one or more alternates would be selected.

Any criminal offense must be decided by a unanimous verdict. This verdict must unanimously agree that the defendant is either guilty or not guilty. If a unanimous verdict cannot be reached, then a new jury would be selected and the case would be retried.

If you are called for jury duty, you are required by law to answer the questionnaire truthfully. Only the judge can excuse someone from serving on the jury.

CHAPTER TWO

CRIMINAL LAW*

A. CLASSIFICATION OF CRIMES

1. General

a. Utah Crimes - Code

Chapters 1 - 10 of Title 76 of the Utah Code Annotated set out the crimes and punishments that are enforced at the state level.

b. Classes of Crimes

In Utah, crimes are classified as either misdemeanors or felonies and carry the following maximum punishments:

<u>Classification</u>		<u>Maximum Punishments</u>
	Fines	Jail Terms
<u>Misdemeanors</u>		
Class A	\$ 1,000.00	1 year - or less
Class B	299.00	6 months - or less
Class C	299.00	90 days - or less
<u>Felonies</u>		
Capital	(No Fine)	Life or death sentence
First Degree	\$10,000.00	5 years to life
Second Degree	10,000.00	1 year to 15 years
Third Degree	5,000.00	up to 5 years

(If a firearm was used in the commission or furtherance of a felony, an additional sentence of 5 years may be added to run consecutively and not concurrently.)

Certain kinds of crimes are punishable as felonies in Utah: arson, assault, burglary, criminal mischief,

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extortion, promoting prostitution, rape, robbery, sodomy, theft, aggravated murder, murder, manslaughter, kidnapping, coercion, forgery and unauthorized use of a vehicle.

c. Parties to Crimes

In Utah, a person is guilty of a crime if it is committed as a result of his or her conduct or the conduct of another person for which he or she is responsible or criminally liable. A person is considered criminally liable for the conduct of another person when he or she solicits or orders another person to commit the crime, aids, abets or attempts to aid or abet another in planning or committing the crime (conspiracy) or has a legal obligation to prevent the commission of the crime and fails to make an effort that he or she is obliged to make.

2. Homicide (killing a person)

The Utah Code Annotated classifies the state of the person's mind when he or she committed the criminal act as intentionally, knowingly, recklessly or criminally negligent. The statutes define "intentionally" as acting with a "conscious objective" to cause the result. (UCA § 76-2-103(2)) "Knowingly" is defined as acting with an "awareness" that the conduct is illegal or will cause physical injury. (UCA § 76-2-103(2)) "Recklessly" is used to define an act that the person is aware of and "consciously disregards a substantial and unjustifiable risk that the result will occur." (UCA § 76-2-103(3)) A person is criminally negligent when he or she "fails to be aware of a substantial and unjustifiable risk" that the illegal result will occur. An unjustifiable risk, as mentioned in recklessly and criminally negligent, refers to a gross deviation from the standard of care that a reasonable person would observe under the same circumstances. (UCA § 76-2-103(4)).

The following are the different types of criminal homicide as defined by Utah laws:

a. Murder in the first degree.

(1) Criminal homicide constitutes murder in the first degree if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

- (a) The homicide was committed by a prisoner who is confined in a jail or other penal institution regardless of whether such confinement is legal.
- (b) At the time the homicide was committed the actor also committed another homicide,
- (c) The actor knowingly created a great risk of death to a person other than the victim and the actor.
- (d) The homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit, aggravated robbery, robbery, rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping or kidnapping.
- (e) The homicide was committed for the purpose of avoiding or preventing an arrest by a peace officer acting under color of legal authority or for the purpose of effecting an escape from lawful custody.
- (f) The homicide was committed for pecuniary or other personal gain.
- (g) After having previously been convicted of first or second degree murder.
- (h) The homicide was committed for the purpose of preventing a witness from testifying, or a person from providing evidence, or a person from participating in any legal proceedings or official investigation.

(2) Murder in the first degree is a capital offense. (See UCA § 76-5-202.)

b. Murder in the second degree.

(1) Criminal homicide constitutes murder in the second degree if the actor:

- (a) Intentionally or knowingly causes the death of another; or
- (b) Intending to cause serious bodily injury to another, he commits an act clearly dangerous to human life that causes the death of another; or
- (c) Acting under circumstances evidencing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another and thereby causes the death of another; or
- (d) While in the commission, attempted commission, or immediate flight from the commission or attempted commission of aggravated robbery, robbery, rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, causes the death of another person other than a party.

(2) Murder in the second degree is a felony of the first degree. (See UCA § 76-5-203.)

c. Manslaughter.

(1) Criminal homicide constitutes manslaughter if the actor:

- (a) Recklessly causes the death of another; or
- (b) Causes the death of another under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse;

- (c) Causes the death of another under circumstances where the actor reasonably believes the circumstances provide a moral or legal justification or extenuation for his conduct although the conduct is not legally justifiable or excusable under the existing circumstances.

(2) Manslaughter is a felony of the second degree. (See UCA § 76-5-206.)

d. Negligent homicide.

(1) Criminal homicide constitutes negligent homicide if the actor, acting with criminal negligence, causes the death of another.

(2) Negligent homicide is a class A misdemeanor. (See UCA § 76-5-206.)

e. Automobile homicide.

(1) Criminal homicide constitutes automobile homicide if the actor, while under the influence of intoxicating liquor, a controlled substance, or any drug, to a degree which renders the actor incapable of safely driving a vehicle, causes the death of another by operating a motor vehicle in a negligent manner.

(2) Automobile homicide is a felony of the third degree. (See UCA § 76-5-207.)

3. Assaults (harming a person)

The following are the assault offenses under Utah law:

a. Assault.

(1) Assault is:

- (a) An attempt, with unlawful force or violence, to do bodily injury to another; or
- (b) A threat, accompanied by a show of immediate force or violence, to do bodily injury to another.

(2) Assault is a class B misdemeanor. (See UCA § 76-5-102.)

b. Assault against peace officer on duty. Any person who assaults a peace officer, with knowledge that he is on duty, is guilty of a class A misdemeanor. (See UCA § 76-5-102.4.)

c. Assault by prisoner. Any prisoner who commits assault, intending to cause bodily injury, is guilty of a felony of the third degree. (See UCA § 76-5-102.5)

d. Aggravated assault.

(1) A person commits aggravated assault if he commits assault as defined in section 76-5-102 and:

(a) He intentionally causes serious bodily injury to another; or

(b) He uses a deadly weapon or such means or force likely to produce death or serious bodily injury.

(2) Aggravated assault is a felony of the third degree. (See UCA § 76-5-103.)

e. Aggravated assault by prisoner.

(1) Any prisoner, not serving a sentence for a felony of the first degree, who commits aggravated assault is guilty of a felony of the second degree.

(2) Any prisoner serving a sentence for a felony of the first degree who commits aggravated assault is guilty of:

(a) A felony of the first degree if no serious bodily injury was caused; or

(b) A capital felony if serious bodily injury was intentionally caused. (See § 76-5-103.5.)

f. Consensual altercation no defense to homicide or assault if deadly weapon used. In any prosecution for criminal homicide or assault, it shall be no defense to

the prosecution that the defendant was a party to any duel, mutual combat, or other consensual altercation, if during the course of the duel, combat, or altercation any deadly weapon was used. (See UCA § 76-5-104.)

g. Mayhem.

(1) Every person who unlawfully and intentionally deprives a human being of a member of his body, or disables or renders it useless, or who cuts out or disables the tongue, puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

(2) Mayhem is a felony of the second degree. (See UCA § 76-5-105.)

h. Harassment.

(1) A person is guilty of harassment if, with intent to frighten or harass another, he communicates in writing a threat to commit any violent felony.

(2) Harassment is a class C misdemeanor. (See UCA § 76-5-106.)

i. Terroristic threat.

(1) A person commits terroristic threat if he threatens to commit any offense involving violence with intent:

- (a) To cause action of any sort by an official or volunteer agency organized to deal with emergencies; or
- (b) To place a person in fear of imminent serious bodily injury; or
- (c) To prevent or interrupt the occupation of a building, room; place of assembly; place to which the public has access; or aircraft, automobile, or other form of conveyance.

(2) Terroristic threat is a class B misdemeanor unless the actor's intent is to prevent or interrupt the occupation of a building, a place to which the public has

access, or a facility of public transportation operated by a common carrier, in which event terroristic threat is a third degree felony. (See UCA § 76-5-107.)

4. Offenses Against Property

The following is an outline of the various offenses against property set out in the Utah statutes:

a. Property Destruction

(1) Arson.

(a) A person is guilty of arson if, under circumstances not amounting to aggravated arson, by means of fire or explosives, he unlawfully and intentionally damages:

(i) Any property with intention of defrauding an insurer; or

(ii) The property of another.

(b) A violation of subsection (i) is a felony of the third degree. A violation of subsection (ii) is a felony of the third degree if the damage caused exceeds \$5,000.00 value; a class A misdemeanor if the damage exceeds \$1,000.00 but is not more than \$5,000.00 value; a class B misdemeanor if the damage caused exceeds \$250.00 but is not more than \$1,000.00; any other violation is a class C misdemeanor. (See UCA § 76-6-102.)

(2) Aggravated arson.

(a) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages:

(i) A habitable structure; or

(ii) Any structure or vehicle when any person not a participant in the

offense is in the structure or vehicle.

- (b) Aggravated arson is a felony of the second degree. (See UCA § 76-6-103.)

(3) Reckless burning.

- (a) A person is guilty of reckless burning if he:

(i) Recklessly starts a fire or causes an explosion which endangers human life; or

(ii) Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm; or

(iii) Damages the property of another by reckless use of fire or causing an explosion.

A violation of subsections (i) and (ii) is a class A misdemeanor. A violation of subsection (iii) is a class A misdemeanor if damage to property exceeds \$1,000.00 value; a class B misdemeanor if the damage to property exceeds \$500.00 value; and a class C misdemeanor if the damage to property exceeds \$50.00 value. Any other violation under subsection (iii) shall constitute an infraction. (See UCA § 76-6-104.)

(4) Causing a catastrophe.

- (a) Any person who by explosion, fire, flood, avalanche, collapse of a building, release of poison gas, radioactive material, or other harmful

or destructive force or substance, or by any other means, causes a wide-spread injury or damage to persons or property is guilty of causing a catastrophe.

- (b) Causing a catastrophe is a felony of the second degree if the person causes it knowingly and a class A misdemeanor if caused recklessly. (See UCS § 76-6-105.)

(5) Criminal mischief.

- (a) A person commits criminal mischief if:

(i) Under circumstances not amounting to arson, he damages or destroys property with the intention of defrauding an insurer; or

(ii) He intentionally and unlawfully tampers with the property of another and thereby:

[a] Recklessly endangers human life; or

[b] Recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

(iii) He intentionally damages, defaces, or destroys the property of another.

(iv) He recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car or caboose, whether moving or standing.

(b) (i) A violation of Section 76-6-106(1)(a) is a felony of the third degree.

(ii) A violation of Section 76-6-106(1)(b) is a class A misdemeanor.

- (iii) Any other violation of this section is a felony of the third degree if the actor's conduct causes or is intended to cause pecuniary loss in excess of \$1,000.00 value; a class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of \$500.00; a class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of \$250.00; and a class C misdemeanor if the actor's conduct causes or is intended to cause loss of less than \$250.00. (See UCA § 76-6-106.)

b. Burglary and Criminal Trespass

(1) Burglary.

- (a) A person is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit a felony or theft or commit an assault on any person.
- (b) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree. (See UCA § 76-6-202.)

(2) Aggravated burglary.

- (a) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary, the actor or another participant in the crime:
- (i) Causes physical injury to any person who is not a participant in the crime; or
- (ii) Uses or threatens the immediate use of a dangerous or deadly weapon against any person who is not a participant in the crime; or

(iii) Is armed with a deadly weapon or possesses or attempts to use any explosive or deadly weapon.

(b) Aggravated burglary is a felony of the first degree. (See UCA § 76-6-203.)

(3) Burglary of a vehicle.

(a) Any person who unlawfully enters any vehicle with intent to commit a felony or theft is guilty of a burglary of a vehicle.

(b) Burglary of a vehicle is a class A misdemeanor. (See UCA § 76-6-204.)

(4) Criminal trespass.

(a) For purposes of this section "enter" means intrusion of the entire body.

(b) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in sections 76-6-202, 76-6-203, or 76-6-204:

(i) He enters or remains unlawfully on property and:

[a] Intends to cause annoyance or injury to any person thereon or damage to any property thereon; or

[b] Intends to commit any crime, other than theft or felony;

[c] Is reckless as to whether his presence will cause fear for the safety of another.

(ii) Knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

- [a] Personal communication to the actor by the owner or someone with apparent authority to act for the owner; or
 - [b] Fencing or other enclosure obviously designed to exclude intruders; or
 - [c] Posting of signs reasonably likely to come to the attention of intruders.
- (c) A violation of subsection (b)(i) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor. A violation of subsection (b)(ii) is an infraction.
 - (d) It is a defense to prosecution under this section:
 - (i) That the property was open to the public when the actor entered or remained; and
 - (ii) The actor's conduct did not substantially interfere with the owner's use of the property. (See UCA § 76-6-206.)

c. Robbery

(1) Robbery.

- (a) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.
- (b) Robbery is a felony of the second degree. (See UCA § 76-6-301.)

(2) Aggravated robbery.

- (a) A person commits aggravated robbery if in the course of committing robbery, he:
 - (i) Uses a firearm or a facsimile of a firearm, knife or a facsimile of a knife or a deadly weapon; or
 - (ii) Causes serious bodily injury upon another.
- (b) Aggravated robbery is a felony of the first degree.
- (c) For the purposes of this part, an act shall be deemed to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery. (See UCA § 76-6-302.)

d. Theft

(1) Presumptions and defenses. The following presumption shall be applicable to charges of theft:

- (a) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.
- (b) It is no defense that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this subsection shall not include a security interest for the repayment of a debt or obligation.
- (c) It is a defense under this part that the actor:

- (i) Acted under an honest claim of right to the property or service involved; or
- (ii) Acted in the honest belief that he had the right to obtain or exercise control over the property or service as he did; or
- (iii) Obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented.

(2) Theft - Elements. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof. (See UCA § 76-6-404.)

(3) Theft by deception.

- (a) A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.
- (b) Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or worth in communications addressed to the public or to a class or group. (See UCA § 76-6-405.)

(4) Theft by extortion.

- (a) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
- (b) As used in this section, extortion occurs when a person threatens to:

- (i) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or
- (ii) Subject the person threatened or any other person to physical confinement or restraint; or
- (iii) Engage in other conduct constituting a crime; or
- (iv) Accuse any person of a crime or expose him to hatred, contempt, or ridicule; or
- (v) Reveal any information sought to be concealed by the person threatened; or
- (vi) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (vii) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or
- (vii) Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or
- (ix) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships. (See UCA § 76-6-406.)

(5) Theft of lost, mislaid, or mistakenly delivered property. A person commits theft when:

- (a) He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return it to the owner; and
- (b) He has the purpose to deprive the owner of the property when he obtains the property or at any time prior to taking the measures designated in paragraph (1).

(6) Theft of services.

- (a) A person commits theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor.
- (b) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts such services to his own benefit or to the benefit of another who he knows is not entitled thereto.
- (c) As used in this section "services" includes, but is not necessarily limited to, labor, professional service, public utility, and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, gas, electricity, water or steam, and the like, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made. (See UCA § 76-6-409.)

(7) Theft by person having custody of property pursuant to repair or rental agreement.

(a) A person is guilty of theft if:

(i) Having custody of property pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair, or use of such property, he intentionally uses or operates it, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(ii) Having custody of any property pursuant to a rental or lease agreement where it is to be returned in a specified manner or at a specified time, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement. (See UCA § 76-6-410.)

(8) Theft - Classification of offenses - Action for treble damages against receiver of stolen property.

(a) Theft of property and services as provided in this chapter shall be punishable as follows:

(i) As a felony of the second degree if:

[a] The value of the property or services exceeds \$1,000.00; or

[b] The property stolen is a firearm or an operable motor vehicle; or

- [c] The actor is armed with a deadly weapon at the time of the theft; or
 - [d] The property is stolen from the person of another.
- (ii) As a felony of the third degree if:
- [a] The value of the property or services is more than \$250.00 but not more than \$1,000.00; or
 - [b] The actor has been twice before convicted of theft or property or services valued at \$250.00 or less; or
 - [c] When the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, or poultry.
- (iii) As a class A misdemeanor if the value of the property stolen was more than \$100.00 but does not exceed \$250.00.
- (iv) As a class B misdemeanor if the value of the property stolen was \$100.00 or less.
- (b) Any person who has been injured by a violation of subsection (1), of section 76-6-408 may bring an action against any person mentioned in (d) for three times the amount of actual damages, if any sustained by the plaintiff, costs of suit and reasonable attorneys' fees. (See UCA § 76-6-412.)

e. Fraud

(1) Forgery - "Writing" defined.

(a) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(i) Alters any writing of another without his authority or utters any such altered writing; or

(ii) Makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(b) As used in this section, "writing" includes printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be:

(i) A security, revenue stamp, or any other instrument or writing issued by a government, or any agency thereof; or

(11) A check with a face amount of \$100.00 or more, an issue of stocks, bonds, or any other instruments or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(d) Forgery is a felony of the third degree if the writing is or purports to be a check with a face amount of less than \$100.00; all other forgery is a class A misdemeanor. (See UCA § 76-6-501.)

5. Sex Offenses

The following is a summary of various offenses set out in the Utah statutes:

a. Unlawful sexual intercourse.

(1) A person commits unlawful sexual intercourse if that person has sexual intercourse with a person, not that person's spouse, who is under sixteen years of age.

(2) Unlawful sexual intercourse is a felony of the third degree except when at the time of intercourse the actor is no more than three years older than the victim, in which case it is a class B misdemeanor. Evidence that the actor was not more than three years older than the victim at the time of the intercourse shall be raised by the defendant. (See UCA § 76-5-401.)

b. Rape.

(1) A person commits rape when the actor has sexual intercourse with another person, not the actor's spouse, without the victim's consent.

(2) Rape is a felony of the second degree unless the victim is under the age of 14, in which case the offense is punishable as a felony of the first degree. (See UCA § 76-5-402.)

B. DEFENSES

1. The following is an outline of various affirmative defenses set out in the Utah statutes:

a. Person under fourteen years not criminally responsible. - A person is not criminally responsible for conduct performed before he reaches the age of fourteen years. This section shall in no way limit the jurisdiction of or proceedings before the juvenile courts of this state. (See UCA § 76-2-301.)

b. Compulsion.

(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in subsection (1) provided. (See UCA § 76-2-302.)

c. Entrapment.

(1) It is a defense that the actor was entrapped into committing the offense. Entrapment occurs when a law enforcement officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in

order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

- (2) The defense of entrapment shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening the injury to a person other than the person perpetrating the entrapment.
- (3) The defense provided by this section is available even though the actor denies commission of the conduct charged to constitute the offense.
- (4) Upon written motion of the defendant, the court shall hear evidence on the issue and shall determine as a matter of fact and law whether the defendant was entrapped to commit the offense. Defendant's motion shall be made at least ten days before trial except the court for good cause shown may permit a later filing.
- (5) Should the court determine that the defendant was entrapped, it shall dismiss the case with prejudice, but if the court determines the defendant was not entrapped, such issue may be presented by the defendant to the jury at trial. Any order by the court dismissing a case based on entrapment shall be appealable by the state.
- (6) In any hearing before a judge or jury where the defense of entrapment is an issue, past offenses of the defendant shall not be admitted except that in a trial where the defendant testifies he

may be asked of his past convictions for felonies and any testimony given by the defendant at a hearing on entrapment may be used to impeach his testimony at trial. (See UCA § 76-2-303.)

d. Ignorance or mistake of fact or law.

- (1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.
- (2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:
 - (a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and
 - (b) His ignorance or mistake resulted from the actor's reasonable reliance upon:
 - (i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or
 - (ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.
- (3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may

nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed. (See UCA § 76-2-304.)

e. Mental disease or defect.

- (1) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the proscribed conduct, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.
- (2) As used in this section, the terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (See UCA § 76-2-305.)

f. Voluntary intoxication. Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense. (See UCA § 76-2-306.)

g. Voluntary termination of efforts prior to offense. It is an affirmative defense to a prosecution in which an actor's criminal responsibility arises from his own conduct or from being a party to an offense under section 76-2-201 [76-2-202] that prior to the commission of the offense, the actor voluntarily terminated his effort to promote or facilitate its commission and either:

- (1) Gave timely warning to the proper law enforcement authorities or the intended victim; or
- (2) Wholly deprives his prior efforts of effectiveness in the commission. (See UCA § 76-2-307.)

C. THE CRIMINAL JUSTICE PROCESS

1. Arrest

A person's involvement with the criminal justice system normally begins with arrest. Arrest may be made by a peace officer with or without a warrant. The arrested person is best advised not to physically resist the arrest. If he believes that the arrest is improper or unlawful, he should communicate that fact to the arresting officers without physically resisting the arrest.

In the vast majority of cases, the accused is best served by making no statements to any government officer about the events leading up to the arrest until after consulting with a lawyer, except to identify himself to the officers if requested. Otherwise, one may forego his constitutional right not to be compelled to be a witness against himself.

2. Preliminary Proceedings

Following the arrest, the accused will be booked in the county jail or taken immediately before a magistrate. The booking process amounts to registration at the jail. Personal belongings are inventoried and placed in safe keeping and the accused is searched for weapons (if this has not been done at the time of the arrest), photographed and finger-printed. These basic procedures have been approved by the courts and ordinarily do not violate any rights of the accused.

- a. Initial Appearance - Bail and Preliminary Hearing. Within a reasonable time the accused must be presented before a magistrate. This presentment is for the purpose of informing the defendant of the reason for his arrest and for the setting of bail. Any judges within this state may act as magistrates for this purpose. In the federal system this function is usually performed by a U. S. magistrate. Bail is usually an amount of money which the accused is required to deposit with the court to secure his release pending the resolution of the case. If the accused fails to appear in court as required, the amount posted as bail

may be forfeited to the court and a new warrant may be issued for the arrest of the accused.

In the case of a felony, this first presentment of the defendant before a magistrate is also for the purpose of setting a time for a preliminary hearing -- a pretrial proceeding at which the government must satisfy the judge that there is probable cause (i.e. it is more probable than not to believe that the accused committed the crime as charged) -- and for the appointment of counsel if necessary. If the government fails to show probable cause at the preliminary hearing, the accused is released and the charge is dismissed.

Every person charged with an offense punishable by imprisonment is entitled to counsel. If he cannot afford counsel, one will be appointed for him without charge.

- b. Arraignment. The next step is the arraignment, at which the accused enters a plea, usually either guilty or not guilty, to the formal charge.

If the accused pleads guilty, a presentence report may be prepared and the court proceeds with sentencing. If the plea is not guilty, a trial date is set.

3. The Trial

Misdemeanors under Utah law are tried in the justice of the peace courts and in the circuit courts, and convictions may be appealed first to the district court and in certain cases to the Utah Supreme Court. Felonies are tried in the district courts and convictions may be appealed to the Utah Supreme Court and thereafter, under limited circumstances, to the Federal courts and even the United States Supreme Court. A conviction for a capital felony (punishable by death) is automatically reviewed by the Utah Supreme Court, whether the defendant wishes to appeal or not. If the defendant wins his appeal, the case is sent back to the district court for a new trial.

Once a person has been charged with an offense and a jury or judge begins to hear evidence against him at a trial, that person may not ordinarily be charged again with the same offense, regardless of whether the trial results in acquittal, dismissal or conviction. This is because both the federal and state constitutions declare that no person may be placed twice in jeopardy (prosecuted) for the same offense.

D. JUVENILE LAW

1. Introduction

In Utah, anyone under the age of 18 who is charged with a misdemeanor or crime will be brought before a juvenile court. The minor may be remanded to a circuit or district court to stand trial as an adult if these conditions are met:

- a. The minor is older than 16;
- b. the minor is charged with committing a criminal offense;
- c. the juvenile court determines that a minor is not amenable to rehabilitation facilities available to the juvenile court.

The purpose of having a separate court for juveniles is to be more flexible and informal and less harsh than adult criminal courts. The court is directed by law to make its decision based on the best interests of the minor.

The juvenile court has jurisdiction to hear cases involving a person under 18 years of age who has broken a law; who has run away; whose parents have abused, neglected or failed to care for the minor; who is dependent for care and support on a child care agency that needs the services of the court to plan for the minor; whose parents or guardian cannot control him or her; and whose well-being is in danger or who is a danger to the well-being of others.

2. Procedure in Juvenile Courts (See Chapter 3 in this Volume, "Juvenile Law")

Juvenile court proceedings are informal; thus, depending on the nature of the case, there may be a formal hearing after going through several stages, or the matter may be handled in one meeting with the judge.

The first step in a juvenile proceeding may be taken by anyone filing a complaint or reporting an incident to court officials. Generally the case begins with a police officer taking the juvenile into custody.

Utah law provides that taking a juvenile into custody is not to be termed an arrest since juvenile proceedings are not considered to be criminal.

However, the police officer has a duty to give a juvenile Miranda warnings if he or she decides to take the juvenile into custody for questioning. A detailed discussion of the Miranda rights may be found in Chapter II of Street Law.

Juveniles also have the same rights as adults when a police officer requests permission to search the juvenile, his or her car or home. A discussion of search and seizure may be found in Chapter II of the Street Law textbook.

Juvenile law process in Utah makes use of words which reflect a de-emphasis of the criminal process. For example, the term "custody" is used instead of "arrest", "petition" instead of "criminal complaint", "adjudication" instead of "trial", and "disposition" instead of "sentencing".

One of the most crucial stages in the juvenile justice process is called remand. Remand means that if certain conditions are met, the juvenile court may place the juvenile within the jurisdiction of the adult court where the juvenile will then be tried and sentenced as an adult. A hearing is held to determine if remand is appropriate and the juvenile is entitled to an attorney.

Another area of concern is the expungement and use of juvenile records. The juvenile court shall order the destruction of juvenile records if at least two years have elapsed since the last termination, if the person has not been convicted of a felony or a class A misdemeanor since the last termination, and if no proceedings seeking a

criminal conviction in juvenile court are pending. A juvenile record includes any reports or information relating to a person's contact with any law enforcement agency or juvenile court. Once the records are expunged, the contact with the juvenile justice system, which is the subject of the record, shall be treated as if it never occurred. Therefore, the person can assert that a record never existed when asked by a prospective employer.

Even if a record has not been destroyed, it is withheld from public disclosure or inspection. However, it is open to inspection by the child, his or her parent or guardian and their attorneys. Reports and other material relating to the child's history and prognosis are privileged, and as a rule, shall not be disclosed directly or indirectly except at the request of the child. An example of this kind of material would be the transcript of a student's academic record at Maclaren School for Boys. There are a few exceptions. The judge of the juvenile court, those acting under his or her direction, the attorneys of record for the child and the child's parents or guardians may access the records.

No information appearing in the record may be used as evidence in any proceeding to establish criminal or civil liability of the child, whether or not such proceedings occur after the child has reached 18, except:

a. for a presentence investigation after the guilt of the child has been established, or

b. in connection with a case concerning the child in another juvenile court or an appeal from the juvenile court.

APPENDIX

Organizations to Know--Chapter Two

Odyssey House
Drug Treatment Center
68 South 600 East
Salt Lake City, Utah 84102
322-1001

Project Reality
200 East 600 South
Salt Lake City, Utah 84111
364-8080

Rape Crisis Center
776 West 200 North
Salt Lake City, Utah 84116
532-7273 (532-RAPE)

Salt Lake City Police Department
Administration
450 South 300 East
Salt Lake City, Utah 84111
535-7272

Salt Lake County Sheriff's Department
Administration
437 South 2nd East
Salt Lake City, Utah 84111
535-7476

Salt Lake County Jail
Hall of Justice
450 South 3rd East
Salt Lake City, Utah 84111
535-7084

Utah State Prison
Draper, Utah 84020
571-2300

F.B.I.
125 South State
Salt Lake City, Utah 84111

Utah State Department of Social Services
Corrections Division
P.O. Box 2500
150 W. North Temple, Room 375
Salt Lake City, Utah 84103
533-6541

YWCA
Women's Community Corrections Center
322 South 300 East
Salt Lake City, Utah 84111
364-1658

Chapter Two
CRIMINAL LAW

"Where You Live" Questions and Answers:

1. a. What is the major crime problem in your community?

Burglary and larceny

- b. What crimes have increased most over the last three years?

Burglary, larceny and robbery

- c. Where can you get this information?

Crime analysis units of the Salt Lake County Sheriff and Salt Lake City Police Department; F.B.I.; Utah Department of Public Safety.

2. In your community, what are the penalties for possession and/or sale of marijuana, amphetamines, cocaine, and heroin?

The possession of any controlled substance is a misdemeanor. The sale of any controlled substance is a felony. The sale of the more dangerous drugs, such as cocaine and heroin, are classified as second degree felonies; marijuana and amphetamines as third degree felonies.

3. How does the criminal justice system in Utah compare to the system shown in Figure 4, page 60-61 of Street Law, Second Edition?

Same, except for under the "Juvenile Institution" category, "Custody" should be included. Custody may include institutional placement, group homes, foster care, or arrangements similar to probation. If the juvenile is released from the physical custody of an institution, he is placed on parole during the term of his sentence.

CHAPTER THREE

JUVENILE LAW*

A. INTRODUCTION

As is evident from the foregoing chapter, persons under eighteen years of age are treated differently from adults in Utah. A juvenile court system, separate from the adult court system, is designed to help rehabilitate rather than merely punish young people charged with violating the law. Its goal is to protect the welfare of juveniles while protecting society against delinquent acts, and as such, proceedings in juvenile court are civil, rather than criminal, in nature. A youth convicted of an offense in juvenile court is, therefore, not considered convicted of a crime.

Utah law provides that juvenile courts have jurisdiction - or authority over any person under age eighteen who:

- (1) Violates a state, federal or local law or municipal ordinance;
- (2) Is neglected or dependent;
- (3) Is a habitual truant, despite school and parental efforts.

The juvenile court may also have jurisdiction in the following matters:

- (1) To determine the custody of neglected and dependent children;
- (2) For judicial consent for marriage, employment or enlistment of a child when such consent is required by law;

*This chapter was written by Steven Kuhnhausen of the law firm of Collard, Kuhnhausen, Pixton and Downes, and Patricia A. DeMichele of the law firm of Moyle & Draper.

(3) For the treatment or commitment of mentally ill or mentally retarded children who come under the court's jurisdiction.¹

B. ENTERING THE SYSTEM

A minor enters the juvenile justice system in one of two ways. A police officer, or in some instances a private citizen or probation officer, may take the youth in custody. In other cases a referral may be made to an intake worker in juvenile court regarding the child and his activities.

A police officer may take a minor into custody for several reasons: the officer may see the child violating a law; there may have be good reason to believe the child committed an act which would be a felony if committed by an adult; the child may be seriously endangered by his environment (neglected or dependent) or may pose a serious danger to others; the officer may reasonably believe the child ran away from a parent or guardian.

When a juvenile is taken into custody, the parents must be notified without delay. The juvenile must then be released to the parents or another responsible adult unless the minor's welfare or the protection of the community requires continued detention.

If the minor is not released, he or she must be immediately taken to the appropriate place for holding juveniles. Youths suspected of crimes are usually taken to a detention center. Most northern Utah counties follow the same procedure. Children who are neglected, dependent or abused are generally placed in shelter homes.

If a juvenile is not released, the person who took custody must inform the court of the facts bringing the child into the juvenile system and the reason the child was not released. Parents must be notified at this stage if they have not already been contacted.

¹See "Criminal Conduct by Young People" in the Criminal Law Chapter of this volume.

A juvenile cannot be held in detention or in a shelter home for more than 48 hours without a court hearing. This period excludes weekends and holidays. At the hearing the judge will decide if the child should be allowed to return home. If the judge decides to hold the child, a petition must be filed within 5 days or the child will be released. Of course, the court can continue a child in detention or shelter care after a petition has been filed for a period in excess of 48 hours.

It is generally thought to be a poor practice to detain juveniles in adult jails, and no youth under sixteen years of age may be legally held in jail in the same holding area as adults. In rural areas, however, there are often no juvenile facilities and youth may be temporarily placed in jails out of necessity. In addition, a juvenile over sixteen may, under certain extreme circumstances, be held with adults.

The juvenile system does not provide for bail for juveniles who are kept in custody. In other words, juveniles must either be released or held as the court determines. (Exception: transients can post bail and be released pending a hearing.)

In Utah, juveniles charged with violations of the law are given certain special rights: They are protected from publicity; when photographs are permitted by the judge they are kept confidential; fingerprints may be taken only with the express permission of a judge; if a juvenile requests, the youth's parents or attorney are allowed to be present during any questioning; and a police officer must obtain the court's permission to question a child who is in custody

In addition to these special rights, juveniles have many of the same protections given adults: Notice of any charges must be given to the minor and his parents; the minor has a right to call favorable witnesses to testify, and a right to confront adverse witnesses and to cross-examine them when they testify; a right to have a written record of the proceedings and to appeal the judge's decision; alleged violations of the law must be proven beyond a reasonable doubt; and the juvenile has the right to be represented by an attorney.

A juvenile may come before the court because someone referred his or her name to an intake worker because of delinquent behavior or a dangerous home situation. In such cases the juvenile and his or her parents are asked to speak with the intake worker to determine the facts of the case. The intake worker has several choices. If there appears to be insufficient evidence of the juvenile's involvement in a crime, the case is returned to the referring agency for further investigation. If the youth admits to the offense, the intake worker may close the case unofficially (nonjudicial adjustment), rather than take it before the judge. If the juvenile denies the charge, the intake worker must file a petition with the court so that the judge can determine an appropriate course of action.

After the juvenile has been taken into custody by the police, and at all stages in the questioning process, the Miranda Warning must be given, and the youth has the right to remain silent. (See Criminal Law Chapter for description of Miranda Warning.) A minor may choose to answer the questions anyway. The answers may then be used in court if the court decides that the answers were given freely and without coercion. If the judge believes that the juvenile could not freely decide to give up the right to remain silent, possibly because he or she was too young to really understand that right, the juvenile's answers would not be considered as evidence.

Once a petition is filed for formal action to be taken against a juvenile, the juvenile must be given a chance to admit or deny the allegations stated in the petition. If they are admitted, there is no need for a trial. If they are denied, the case is referred to the county attorney's office for prosecution.

There is no right to a trial by jury for youth in the Utah juvenile justice system. This differs from the adult criminal system, where the defendant may request a jury trial.

In the closed trial held in juvenile court, a deputy county attorney represents the state and tries to prove the allegations contained in the petition beyond a reasonable doubt. The attorney representing the juvenile defends against those allegations.

After the witnesses testify at trial, the judge decides whether or not the allegations in the petition are true. If they are found to be not true, the case will be dismissed; if the allegations are found to be true, the juvenile is said to be within the jurisdiction of the court. The juvenile then has the right to appeal this decision to the Utah Supreme Court, and its five justices review the case to see if the decision was proper.

C. CERTIFICATION AS AN ADULT

In certain cases, the court may have a special hearing to decide if a juvenile should be transferred to the adult criminal system. A candidate for certification must be 14 years of age or older, and the act or acts in question must be such that would amount to a felony if they were committed by an adult. If, after a hearing, the judge decides to waive the juvenile court's jurisdiction over the juvenile and transfer the juvenile court's jurisdiction to the district court, the juvenile will be tried as an adult and can face incarceration at the Utah State Prison.

At the certification hearing the juvenile is entitled to be represented by an attorney, and the court must consider the following factors:

- (1) The seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded in juvenile facilities;
- (2) Whether the offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) Whether the offense was against persons or property;
- (4) The maturity of the juvenile as determined by consideration of his home, environment, emotional attitude and pattern of living;
- (5) The record and previous history of the juvenile;

(6) The likelihood of rehabilitation of the juvenile by use of juvenile facilities;

(7) Whether the state has a meritorious case;

(8) Whether the charge against the juvenile involved adults who would be charged in district court.

If the juvenile court judge finds that any of the above factors are present, the judge may certify the juvenile to stand trial as an adult. In 1981 the Utah Legislature amended the certification statute so as to provide that once a juvenile has been certified and charges have been filed in an adult court, the juvenile is also certified for any subsequent misdemeanors or felonies. Additionally, the 1981 Legislature created a separate certification provision for juveniles 16 years of age or older. If such a juvenile is accused of criminal homicide, attempted criminal homicide, aggravated robbery, forcible sodomy, aggravated arson, aggravated sexual assault, aggravated burglary or aggravated kidnapping and a criminal information is filed or a grand jury indictment is returned against the juvenile, the juvenile is not afforded the right to a certification hearing and shall be charged in every respect as if the juvenile were an adult.

Upon conviction and sentencing in the district court, the district court judge may sentence the juvenile to adult penalties or to juvenile court penalties, or to a combination of both. If the juvenile is acquitted on the certified charge or a magistrate determines there is no probable cause for the certified charge, the juvenile court regains jurisdiction over the juvenile.

An order of certification may be appealed to the Utah Supreme Court before the juvenile enters the adult system. The Supreme Court must review the proceedings and determine if certification is proper before the juvenile can be tried as an adult.

The 1981 amendments also provide that the juvenile court may file objections to direct assumption of jurisdiction by the adult court over an older juvenile accused of one of the crimes noted previously. The objection must be filed with the adult court within ten

days of the filing of the information or return of the indictment. The juvenile court then regains jurisdiction and may proceed with a regular hearing or with a certification hearing, as appropriate.

D. NEGLECTED AND DEPENDENT CHILDREN

The juvenile justice system does not deal solely with violations of the law; the juvenile court also has power over neglected and dependent children.

A dependent child is one who is destitute, homeless or without proper care through no fault of the parents or custodian. A neglected child is one who is abandoned or lacks parental care and is in danger either physically or morally. A neglected or dependent child may be temporarily removed from his home and placed by the court in the custody of the Utah State Division of Family Services or some other licensed child-placement agency for placement in a foster home. Removal of a child from the home is usually a last resort, after attempts have been made to assist the parents and the child to solve whatever problems exist.

In very serious cases, the court may end all the rights parents have to their child, and a home will be found where the child can be adopted and given a new family.

E. DISPOSITION

When the allegations in any juvenile petition are found to be true, the judge must then decide what to do with the juvenile involved (disposition). The main concern in disposition is the best interests of the child. In deciding on an appropriate disposition, the judge considers the juvenile's previous record and the seriousness of the charges, and in cases of neglect or dependency, the ability of the parents to care for the child.

Often minors who are found to be involved in violations of the law are fined for their first offense. There are many other possibilities. For instance, if a victim has suffered a monetary loss as a result of a juvenile's acts, the offender may be ordered to pay back the loss (restitution).

If the juvenile needs structure and guidance, a period of probation may be ordered. During this time the minor must report at regular intervals to a probation officer, who will decide what particular activities or counseling will best help the youth. Requirements of probation differ in every case because they are designed to fit the individual needs of each juvenile.

When a still more structured environment is needed, the child may be taken out of their home and placed in a group home or other residential program. There are "parents" who live at the home and are responsible for the youth living there. They set up programs for each child. The programs usually include special school programs, counseling, work around the house, and sometimes employment.

Finally, the juvenile court may commit the juvenile to the care and custody of the Department of Youth Corrections for community placement, for evaluation or for secure care. The evaluation or secure care is likely to be at the State Youth Development Center in Ogden, or one of its branches.

F. COURT RECORDS

Each juvenile court keeps records of the petitions filed and their outcomes. Also, probation workers and other workers file reports which are called social histories. These show what the juvenile's home situation is like, how he or she is doing in school and at work, the results of psychological tests, and other facts considered important to the court in deciding what is best for the juvenile.

The legal records are open to the juvenile, his or her parents, and to attorneys representing the juvenile. The social history record may be reviewed only with the consent of the judge.

When a juvenile is found to be within the jurisdiction of the juvenile court, Utah law allows continued jurisdiction until that person reaches the age of 21. Of course, the judge may decide to end jurisdiction earlier and usually does so if the child has no more involvement with the court, or has moved into the adult system.

After a child has come within the court's jurisdiction, he or she may later ask the court to expunge the court's record. This means that the court may order the records to be sealed so that they cannot be seen by anyone without permission of the juvenile. The minor may file a petition asking the court for an expungement hearing one year from the date jurisdiction was ended. If the judge finds that the minor has stayed out of trouble, expungement will usually be granted. The youth will then be treated thereafter as if the court involvement never occurred.

APPENDIX

Organizations to Know-Chapter Three

Salt Lake County Attorney
Juvenile Division
3522 South 700 East
Salt Lake City, Utah 84119
262-2601

Salt Lake County Detention Center
3523 South 7th West
Salt Lake City, Utah 84119
535-5830

Salt Lake County Youth Services Center (YSC)
3999 South Main
Salt Lake City, Utah 84107
535-5030

Utah State Department of Social Services
150 W. North Temple
Salt Lake City, Utah 84103

1. Division of Youth Corrections
533-5290
2. Children, Youth and Families Division
533-7107
3. Mental Retardation and Developmental Disabilities
Division
533-5094
4. Field Services
533-7305

Youth Development Center (YDC)
200 North Washington Blvd.
Ogden, Utah 84404
393-8651

Chapter Three

JUVENILE LAW

"Where You Live" Questions and Answers:

1. a. In Utah, what is the maximum age jurisdiction of juvenile court?

Twenty-one if the juvenile court's jurisdiction is acquired before age 18; otherwise, 18.

b. Can juveniles be transferred to adult court in Utah? If so, at what age and under what circumstances?

Yes, through certification which is explained in the chapter on Juvenile Law.

2. a. Where are juvenile offenders placed in your community after being found guilty?

Juvenile offenders are held in detention centers if they are of danger to themselves or to the community until the disposition of their case, or State Youth Development Center.

b. What is the maximum length of time a juvenile can be committed to a juvenile institution?

There is no set time. The Youth Development Center can hold a juvenile until age 21.

c. What happens to juvenile status offenders in your community who are apprehended?

Alcohol, tobacco or truancy violations are automatically referred to Juvenile Court. Ungovernables and runaways are only referred to the Juvenile Court if all else fails, i.e., if other agencies can't solve the problem.

3. a. What are the provisions for the appeal of a juvenile case decision in your state?

There is a right of an appeal to the State Supreme Court if an appeal is taken.

b. Does Utah allow juveniles to have their records erased (expunged)?

Yes, a convicted juvenile may petition the court to expunge their record, one year after the conviction or guilty plea.

c. Who is allowed to inspect juvenile records?

The juvenile, parents and attorney for the juvenile involved in the case.

CHAPTER FOUR

CONSUMER LAW*

A. WHERE CONSUMERS CAN HAVE THEIR COMPLAINTS HEARD

1. Public Agencies

When you have an unresolved problem with a business, you can submit a written complaint to the Consumer Affairs Division of the Department of Business Regulations of Utah (See Appendix). The Division evaluates your written complaint and if it feels the complaint is valid, it contacts the business in an attempt to work out a solution. If your problem is with an out-of-state mail order company, the Division contacts the out-of-state seller or asks the attorney general of the state in which the seller conducts its business to investigate the matter and intervene on your behalf. If the Division determines a lawsuit is necessary to resolve the problem, it refers your case to the Attorney General of the State of Utah.

The Attorney General's office investigates consumer complaints made through the major state agencies. However, it is usually more practical to contact the Division of Consumer Affairs first rather than to contact the Attorney General's office directly. If the Division of Consumer Affairs is unable to help you, it will direct you to the proper agency.

The Public Service Commission is also within the Department of Business Regulations (See Appendix). It has the responsibility of regulating utilities and intrastate transportation. Upon receiving your written complaint, the Commission will attempt to mediate the problem between you and the utility company or transportation company involved. If you are not satisfied with the mediation attempts of the Commission, you may request a formal

*This chapter was written by Dorothy C. Pleshe of the law firm of Green, Callister & Nebeker and Ron Nehring of Utah Legal Services.

hearing before the Commission and at that time present your case. All hearings are public and the Commission's decision is appealable only to the Utah Supreme Court.

If you have a problem with the purchase of stocks, you may file a complaint with the Securities Commission. Usually complaints filed with the Securities Commission involve the nondelivery of stock or suspicion of fraud. If legal action appears necessary, the Securities Commission will refer your complaint to the Utah Attorney General's office.

2. Small Claims Court

Small claims courts are located throughout the State of Utah. If you have a problem which involves no more than \$400.00 or are willing to settle for \$400.00, you can file a complaint with the clerk of the small claims court. The filing fee is \$7.50. No special expertise is needed for presenting a case in small claims court, although lawyers are not excluded. Each side tells his story to the trial judge. To make the court more accessible, lawyers donate their time to serve as judges in the evenings.

Businesses also may sue in small claims court. They often sue when the amount owed by a customer is more than \$400.00, but does not warrant hiring a lawyer and taking the case to a higher court. The business settles for \$400.00 or less.

B. DECEPTIVE SALES PRACTICE ACT

These deceptive sales practices which have proven to be the greatest problems for Utah consumers, including door-to-door sales, phony contests, bait and switch sales and referral schemes, are discussed in your Street Law text. One important omission from its survey of deceptive practices, however, is the "pyramid scheme." The most widely known pyramid scheme is the chain letter. In 1980, pyramid schemes swept over Utah. It is likely that the Utah pyramid fad was an imported variation of the "chain of gold" which looted the wallets of many Californians in early 1980. In many pyramid schemes, the promoter will offer you a chance to buy or "invest" in a dealership or business opportunity. Once you sign up as a dealer, you

acquire the right to sell dealerships to others. Sometimes, a dealer may have an actual product to sell, apart from dealerships. Sound phony? It should. The pyramid scheme produces nothing and provides no useful service to anyone. It is one of the fundamental principles of our free market economy that private enterprises should be productive, if not socially beneficial. The pyramid scheme is thus an unwelcome intruder in our economic system. The Utah Consumer Sales Practices Act has declared pyramid schemes unlawful. If you are tempted by a pyramid offer, remember, you may have a better chance of making a gain if you went to Las Vegas.

C. FREQUENT SOURCES OF CONSUMER MISERY AND HOW TO AVOID THEM

1. Repair and Estimate Fraud

In Utah, consumers are entitled to a written estimate of charges for repairs which exceed \$25.00. Unfortunately, a merchant or mechanic need not volunteer the estimate; instead, the consumer must request it. Once a written estimate is obtained, the consumer must authorize any additional charges which exceed 10% of the estimate. If an estimate was given orally, the business is not required to contact you to authorize additional charges even if they exceed 10% of the original estimate.

2. Automobile Repairs

Automobile repair problems are a major source of consumer distress. Twenty-five percent of the complaints received by the Consumer Affairs Division relate to auto repairs. As your Street Law textbook correctly observes, the repair shop or garage can place a lien on a consumer's automobile which traditionally permits a repairman to keep the automobile until the consumer agrees to pay the repair charges. Since a working automobile is a necessity for most people, the mechanic's lien is a potent weapon which is sometimes used by mechanics to compel consumers to pay for unwanted, defective or unnecessary repairs.

In 1981, Utah changed its mechanic's lien law. The new law gives consumers more rights. Now, when confronted by a repair bill which a consumer is unable or unwilling to pay because the mechanic demands payment for unauthorized or defective work, a consumer may have his

car released to him by posting a bond. The mechanic may then sue to collect the amount of the repair bill, but in the meantime the consumer has the car. Bonds may be purchased from most insurance agents. They are posted with a court. You should contact the court clerk for details about how to properly post a bond.

A second method of generating more clout when dealing with garages and mechanics is available to you if you are able to charge the repair to a lender credit card, like VISA or MasterCard. When you make a purchase using a lender card, the merchant notifies the financial institution which issued you the card of your purchase. The merchant is then paid and the financial institution charges your account. By using your lender credit card to pay for auto repairs, you are able to take possession of your car. If the work proves to be defective or the charges excessive, you must make a good faith effort to resolve the dispute with the mechanic. You may wish to discuss the problem with the mechanic directly, but you should always document your complaint in a letter to the repairman. If your attempts to solve the problem fail, you should send the financial institution (bank, etc.) a copy of your credit card receipt together with an explanation of the problem and your attempt to resolve it. The Fair Credit Billing Act requires that the financial institution remove the charge from your bill until the dispute is resolved. This important but little-used consumer remedy is also available for defective products. But whether the purchase was of a product or a service, it must have been within 100 miles of the consumer's residence.

3. Utility Problems

Energy costs, especially those for gas and electricity, promise to consume an even greater share of our incomes in the future. Since most utilities are monopolies, they are subject to state regulation of many of their business affairs, including the rates they charge customers. In Utah, public utilities are regulated by the Public Service Commission.

Utilities are permitted to charge a security deposit to consumers who apply for service. You have the right to pay the deposit in three monthly installments.

Since gas bills fluctuate widely throughout the year, you have the right to elect to spread your payments over twelve months as part of a "budget billing" system. This program may also be available for your electric bill.

When renting an apartment, you should learn in detail the terms for paying for utility service. If your landlord states that you are to pay for "lights," you should discover whether this includes an electric water heater, or electric heat, both of which could increase your bill substantially.

Telephone service is also regulated by the Public Service Commission. You should ask about the various types of service which may be available to you at lower costs, such as reduced rates for less than fifty calls per month.

If you encounter difficulty in paying your utility bill, you should contact the utility and ask about a deferred payment agreement. This agreement will permit you to make up delinquent payments over an extended period, up to one year. Prior to termination of service, the utility company must give you at least ten days notice of its intent to disconnect your services.

Several Utah cities and towns own utilities. They are not regulated by the Public Service Commission. Municipally owned utilities are not bound to comply with the specific rights outlined above. However, because the United States Supreme Court has determined that you have a Constitutionally protected right to continued utility service, most of these procedures must be observed before you can be deprived of service.

Finally, over the past several years, Congress has appropriated money to assist low income persons with utility bills. While the future of similar programs is uncertain, you should ask the utility or local Legal Services office about low income energy assistance if you need it.

4. Insurance

The insurance industry is one of the largest and most powerful institutions in America. In Utah, an estimated ten percent of our personal income is spent on

insurance. Unfortunately, too few of us are able to solve the basic mysteries of insurance: How much do I need? What kind of insurance is best? Am I getting a good price?

Because the features of policies vary so widely, even within a specific type of coverage, such as life insurance or automobile insurance, a consumer's ability to comparison shop is difficult. It is much easier to identify the numerous types of insurance products which should be avoided than to select the best value among the many reputable and beneficial insurance plans available. For example, cancer insurance and burial insurance are generally acknowledged as being "rip offs". Also, life insurance companies have been actively developing new products to supplement the \$10,000 to \$25,000 "whole life" policies which more consumers are coming to discover provide inadequate benefits at an inflated premium. For a comprehensive guide to life insurance, you should consult the two-part report which appeared in the February and March 1980 issues of Consumer Reports.

The Utah Insurance Commissioner regulates the insurance industry in Utah. In 1981, the Utah legislature granted the Utah Insurance Commissioner additional authority and personnel to police the industry. If you have a complaint about the practices of an insurance company or agent, you should contact the Insurance Commission.

5. "Rent-to-Buy" Plans

A rent-to-buy plan offers a consumer an opportunity to own merchandise, usually a television set or appliance, if he "rents" the merchandise for a specified period, often 72 weeks. Because the rent-to-buy agreement generally states that the merchant and consumer are entering into a series of renewable rental agreements which may be ended at any time by the consumer without further obligation, the merchant does not disclose the total cost of the television or appliance. That cost is usually substantial. For example, if the consumer credit disclosures were required on rent-to-buy agreements, the interest rate charged would often be more than sixty percent. Rent-to-buy plans are not illegal in Utah, but they are a good example of the art of hiding the true cost of merchandise from the consumer.

D. CONTRACTS

1. Minors and Contracts

In Utah, the age of majority is eighteen. Until a person reaches the age of eighteen, he may disaffirm, or refuse to honor, contracts he made other than for necessities such as food, clothing and housing.

2. Unenforceable Contracts

As indicated in your Street Law text, certain contracts are called "unconscionable" or totally unfair and onesided. Courts generally will refuse to enforce such contracts. Whether or not all or part of the contract is unconscionable depends upon the circumstances surrounding the making of the contract. It is not enough that the contract seems or even is unfair. A Utah case, Lundstrom v. Radio Corporation of America, illustrates this. In the Lundstrom case buyers paid, on the average, \$995.00 for color television sets that the manufacturer had suggested sell for \$695.00. The Court pointed out that no one had forced the buyers, who were trying to get out of the contracts, to sign the contracts. The excessive price of the sets had nothing to do with the legality of the contract. It is, therefore, important that you understand a contract and know its terms before you sign it. Just because it later does not seem fair, you may still be obligated under its terms.

3. Written and Oral Contracts

In Utah certain types of contracts must be in writing before they can be enforced by the courts. The purpose of this law is to prevent fraud and perjury. If the terms of a contract are written down, there is less likelihood of a disagreement. Under Utah law, contracts for the sale or lease of land, contracts for the purchase of goods costing over \$500.00, contracts where someone agrees to pay a debt for someone else, and contracts which will not be completed within one year must be in writing. For example, if you are a minor and purchase a car but have trouble making payments, your father may promise to make the payments if you fail to do so. Because your father would be assuming responsibility for your debts, his promise to pay must be in writing before it can be enforced.

E. CONSUMER CREDIT

Borrowing money to buy goods or services for the privilege of enjoying the purchase while you pay for it has become an important part of our economy. Paying cash is generally the cheapest way to make purchases, but often times is not possible or practical. It is common to finance major purchases and "big ticket" items such as cars, furniture and appliances, as well as educational and emergency expenses. Before using credit, you should take a hard look at your reasons for borrowing money, whether you will be able to repay the loan and whether the benefits of borrowing money will offset the additional costs of credit. If you decide to make a purchase on credit, shop around and know all of the terms of the credit arrangement before you sign anything.

1. Utah Consumer Credit Code

The Utah Consumer Credit Code (UCCC) is the law designed to insure that consumers are provided with accurate information in a credit transaction. Under the UCCC, a consumer credit transaction is defined as "one in which credit is extended to a consumer primarily for a personal family household or agricultural use and not for a business or commercial purpose." The Department of Financial Institutions of the State of Utah enforces the provisions of the UCCC. The Utah law is patterned after a federal law called the "Truth-in-Lending Act".

2. Sources of Credit

Because of the competitive nature of the lending business and because many money lenders specialize in specific types of loans, it is wise to shop around for credit to determine which source will offer you the best deal in terms of price, service and convenience. When looking to borrow money, you should check with commercial banks, savings and loans, industrial loan corporations (thrift institutions), credit unions and finance companies. Also, check with the dealer or retail store from whom you are purchasing the goods to determine if it sells goods on credit or installment contracts and, if so, what the costs and terms of the credit arrangement are. Beware of pawnbrokers and loan sharks - borrowing money from these lenders can be more costly than you bargained for! If you have a question about the reputation of a

money lender, contact the Department of Financial Institutions in the State of Utah.

3. Disclosing Costs of Credit

To explain the cost of borrowing money, the UCCC requires that certain "disclosures" be made in writing by a creditor to a consumer. A consumer is entitled to receive these disclosures before the credit transaction is completed. While it was originally thought that the disclosures would make it easier for consumers to understand exactly how much the credit would cost and how it was to be repaid, experience has shown that in many instances these disclosures serve only to confuse both consumers and creditors.

A consumer loan transaction is one in which money is borrowed from a bank or other financial institution to pay for the purchase in cash. In such a loan transaction, a consumer must be told the amount financed, the interest rate and finance charge expressed as an Annual Percentage Rate (APR), the cost of credit in terms of actual dollars, the collateral, if any, required to be given as security to repay the loan and the terms of repayment, including the number, amount and due dates of payments. A consumer is also entitled to know what charges may be imposed if he fails to make a payment on time, whether there are any prepayment penalties and, if so, how they are computed, how a rebate is determined if the loan is paid before it is due and any other charges not included in the finance charge.

A consumer credit sale is one in which money is borrowed directly from the seller of the goods to make the purchase. In such a credit sale transaction, the seller must tell the consumer that information required to be disclosed in a consumer loan transaction in addition to the cash price of the goods, the amount of the down-payment or trade-in allowance, the balance due after the down-payment, the amount of any prepaid finance charges, the total amount financed, the total amount of the finance charges, the total cost of the goods financed, the "deferred payment price" and the total of the payments on all amounts financed.

Because of the number of disclosures required and because of the technical language used in the disclosures,

confusion and errors in making the disclosures are common. To remedy this situation and make the disclosures more meaningful to consumers, the federal Truth-in-Lending Act was simplified in 1980. The federal disclosures are now much clearer and more easily understandable to both consumers and creditors. The Utah Department of Financial Institutions is studying the possibility of simplifying the Utah law so that it is more like the new federal law.

Until the Utah law is simplified, it is important for you as a consumer to ask questions to make sure you understand the disclosures, the effect of the disclosures, interest rates and how much it actually costs you to borrow money. The importance of having such an understanding is demonstrated by the following example:

If you borrow \$1,500 for one year at a cost of \$10.00 per \$100, the terms of repayment make a big difference in the interest rate you are paying. If the loan is due in one payment at the end of the one-year period, you would repay the sum of \$1,500 plus \$150; the interest rate would be a simple 10%. If you repay the loan in twelve equal installments of \$137.50, your interest rate is 18.5%! Your actual dollar cost is still \$165 but, because you are paying throughout the year, you don't have use of your \$1,500 for the full year. In effect, you have use of only about half the original amount for the full year.

4. Interest Rates

The maximum rate of interest which can be charged on consumer credit transactions is determined by the Commissioner of Financial Institutions. The maximum rate of interest which generally can be charged to a consumer is 21%. If a creditor charges more than this rate, the creditor is guilty of "usury." The penalties for usury may include a refund of interest payments, a fine, or imprisonment of the creditor.

Revolving charge accounts involve credit transactions made by use of credit cards issued by retail stores to its customers. There is no limit on the rate of interest which may be charged on revolving charge accounts. This means that a retailer can charge you any rate of interest it wants. Because retailers are no longer limited to charging a maximum rate of interest, it

is important for you to know what interest rate is being charged on your credit cards and understand how the interest rate affects the cost of your purchases. Interest rates may also affect where you choose to make your purchases. Again, the underlying principle is "shop around for credit."

5. Late Charge Fees

Interest rate charges are computed by creditors on the assumption that payments will be made on time. If you fail to make a payment as scheduled, the UCCC allows the creditor to impose a one-time late payment penalty fee of \$9 or 5% of the late payment, whichever is greater. Late charges are not part of the finance charge, but the penalty fee must be disclosed to the consumer before the credit transaction is completed.

6. Right to a Rebate when Loan is Prepaid

If you pay off a loan before it is due, you are entitled to a partial rebate of the interest you paid in advance. Generally this rebate is computed under a formula called the "Rule of 78's". The method by which a rebate will be calculated must be disclosed to you before the credit transaction is completed.

7. Right of Recission

You are guaranteed the right to cancel or rescind a consumer credit transaction without penalty if you put up the equity in your home to secure repayment of the money borrowed or if the sale of goods was solicited at your home or place of employment. If you decide to cancel such a credit transaction, you must notify the creditor of your decision within three business days after the credit transaction was completed. The creditor must return any deposit or money paid by you and cancel the security agreement within 10 days after your notice is received. You must then return any goods you received to the creditor. This right to rescind is often referred to as a "cooling-off period".

8. Security Interests

To ensure that borrowed money is repaid, a lender may require that you put up some of your property

(collateral) to secure repayment of the indebtedness. This is called a security interest. In Utah, there is certain property which is exempt from execution by creditors, such as furniture and household goods. You can voluntarily use the exempt property as collateral. However, if you do, the property is no longer subject to the exemption. If you default on a secured credit transaction, a creditor can take possession of the property in which he has a security interest. The procedures by which a creditor can take possession of such property are discussed later in the section on repossession.

9. Credit Cards

Use of credit cards and charge accounts has made borrowing money to make purchases easy and convenient. There are advantages to using credit cards - such as record-keeping and budgeting. But there are also disadvantages - such as over spending, buying impulsively and not considering the added costs of credit on your purchases. To avoid the pitfalls of over extending your credit, limit the number of credit cards you have and use.

A credit card application constitutes a contract when completed by an applicant and accepted by a creditor. Because persons under eighteen can avoid or disaffirm contracts, creditors will generally not accept applications from minors unless an adult co-signs and agrees to be responsible for the indebtedness incurred by use of the card. It is possible, however, to have a card issued in your individual name if you are a minor, as long as an adult has co-signed your application.

Revolving credit cards are offered by retail stores. The retail stores extend credit to you for purchases you make at the store. As mentioned earlier, revolving credit card transactions are not subject to any maximum interest rate. Make sure you know what the costs of credit are before you use these cards or you could end up paying an extremely high interest rate on your purchases, which is hardly a bargain in the long run.

Like other credit transactions, the UCCC requires certain disclosures to help you understand the costs of credit and terms of repayment. When you apply for a credit card, the conditions under which interest and

finance charges may be imposed, the interest rate charged and the minimum payments required must be disclosed in writing. Your periodic billing statements will tell you how the amount of the finance charge is determined, how long you can postpone paying without having to pay a finance charge, and the minimum periodic payment (usually monthly) required. Other information contained on your monthly statement includes your previous balance on the account, the date and amount of each of your purchases, a recognizable description of each item you have charged, credits for returns, other adjustments and the amount of the finance charge for the month.

An address to which you can write if you disagree with a billing must be set forth in the periodic billing statement. If you disagree with the periodic statement, you have 60 days from the date of the statement within which to write and advise the creditor of the reasons you believe the statement to be wrong. The creditor must acknowledge your billing error inquiry within 30 days and resolve the dispute within two billing cycles, but not more than 90 days. So long as the dispute is not resolved, you need not make any payments on the amounts in dispute. The creditor may not collect any disputed amounts or any finance charges on those amounts. Until a creditor complies with the error resolution procedures, your account cannot be closed, nor can a creditor adversely report on your credit standing because you fail to pay an amount you believe to be in error. If a creditor does not follow the procedure required, he must forfeit the disputed amount, up to \$50, regardless of whether or not an error was made.

Utah law protects you from illegal use of your credit cards. You are liable for a maximum of \$50 in losses in the case of unauthorized use of any credit card which has been stolen from you.

10. Liability of Creditor if it Fails to Comply with the Law

If a creditor violates the disclosure requirements or other provisions of the UCCC, you may bring a legal action for money damages incurred and a penalty equal to twice the amount of the finance charge of at least \$100, but not more than \$1,000. You can also be reimbursed for court costs and attorney's fees if you win the lawsuit.

Even if you win the lawsuit, you must pay off the debt, including the finance charges.

11. What to do if you are denied credit

The UCCC includes certain provisions similar to the federal Equal Credit Opportunity Act. The purpose of these provisions is to provide more equality in granting or denying credit applications, and to prohibit discrimination on the basis of sex or marital status of any applicant. Lenders are also prohibited from discriminating on the basis of age, race, color, religion or national origin in granting credit. Credit may not be denied solely for the reason that the applicant is on welfare.

If you are denied credit, the creditor must tell you the reasons. When a credit bureau report is involved, you can make inquiry as to the information contained in your file and request an investigation to determine if that information is complete, accurate and not misleading. If an error was made, the credit bureau must correct the error. If the dispute is not resolved, you can submit a written statement to the credit bureau reporting your side of the story which will become part of your permanent credit record. If you believe there is an error, or misleading or inaccurate information in your report which is not corrected, you can complain to the Federal Trade Commission or the Credit Division of the Department of Financial Institutions.

12. Credit Insurance

Credit insurance is a type of insurance of considerable cost and questionable value which is sold in connection with loans and credit sales. Credit life insurance will pay off a loan if the borrower dies. Credit accident and disability insurance will make credit payments if a borrower is sick or disabled for an extended period. In 1980, eighty percent of the loans made to consumers in Utah included the sale of credit insurance. Although it is optional, in most cases, the borrowers were not adequately informed and did not know that they were purchasing the insurance. Credit insurance is rarely a prudent purchase and should be avoided.

F. DEFAULT AND COLLECTION PRACTICES

If you fail to make payments or keep other promises you made in a credit transaction, creditors have certain remedies available to them to collect the indebtedness due and owing.

1. Harassment

As under the federal law, Utah law restricts the practices of debt collectors. While the federal Fair Debt Collection Act regulates the conduct of only "third-party" collectors, typically collection agencies which are hired by merchants to collect their bills, Utah's Consumer Sales Practices Act prohibits deceptive collection practices by anyone who attempts to collect bills from consumers.

Collection agencies cannot call at night, call neighbors, call your employer or place of employment or threaten to sue and ruin your credit rating. It is common for debt collectors to threaten to garnish a consumer's wages. While garnishment is available to a creditor who is owed a debt, it can only occur after the creditor has obtained a court judgment that the debt is owed. You may not go to jail under any circumstances for failing to pay a debt. It is unlawful for a bill collector to threaten you with jail.

If you are being subjected to threatening calls and letters from collectors or otherwise being harrassed, contact the Consumer Affairs Division for assistance.

2. Repossession

If you put up goods as security (collateral) for repayment of a debt and you default on your obligations, a creditor has the right to repossess the collateral without first going to court to get permission. This is called "self-help". In taking possession of the goods, a creditor cannot "breach the peace". Repossession on public streets is generally permissible, but where a creditor would have to enter your property without your consent or uses threats, intimidation, force or any action which is likely to produce violence, there is a breach of peace and the creditor cannot repossess the goods without first obtaining a court order. For example, you borrow

money from a bank to purchase a car and give the bank a security interest in the car. After two years of making timely payments, you lose your job and are unable to make payments on your loan. After you unsuccessfully attempt to revise the loan terms, the bank decides to repossess the car. You keep the car in your locked garage. Representatives of the bank come to your home and demand that you unlock your garage and let them take the car, threatening to break the door down if you refuse. You nevertheless refuse. Under the law the bank cannot break in and take the car because it would involve a breach of peace.

If a creditor cannot repossess the collateral without breaching the peace, the creditor must go to court and file a legal action. The creditor can sue either exclusively on the debt without regard to the collateral or can bring an action to recover the collateral. In an action to recover possession of the collateral, you must be given an opportunity to come into court and tell your side of the story before the goods can be repossessed unless the creditor can show he will be irreparably injured, i.e., you are hiding the collateral or are in the process of selling it.

Upon repossession, the creditor may dispose of the collateral at a public or private sale so long as the sale is "commercially reasonable" in terms of manner, time, place and purchase price. You must receive notice of the sale and be given an opportunity to pay the indebtedness and take possession of the collateral.

Under the UCCC, if you buy something on credit for \$2,200 or less and it is repossessed by the lender, you cannot be personally responsible for any amounts over and above the amount of money the creditor gets from the sale of the goods. The creditor is required to accept the repossessed goods as full payment of the indebtedness. If you paid more than \$2,200 for the goods, you may be responsible for any amounts over and above the sum received by the creditor at a sale up to the extent of the indebtedness which includes the creditor's costs of repossession and preparation for the sale. For example, you buy furniture for \$3,000 financed by Woods Furnishings. You make six payments of \$200 each but then are unable to make further payments. Woods Furnishings

repossesses the furniture and sells it for \$1,500 (which is considered a fair price). Because the purchase price was more than \$2,200, you would still owe the furniture store \$300 plus accrued finance charges and costs of repossession and sale - that is, \$3,000 plus accrued finance charges and costs less \$1,200 in payments less \$1,500 received as a result of the sale. These guidelines apply even if you voluntarily surrender the goods to the creditor, although in such a case you won't be responsible for costs of repossession.

3. Garnishment

A creditor may collect money owed by you (if you have defaulted) by filing a lawsuit, obtaining a judgment and then asking the court to issue an order directing your employer to withhold a certain amount of money from your paycheck each payday until the debt is paid. Because you must be allowed to pay certain expenses, including those for necessities, a Utah court cannot order more than 25% of a paycheck to be given to a creditor. The 25% is calculated after all deductions are made, i.e., taxes, social security, retirement.

An employer cannot fire you simply because your wages are subject to garnishment, and a garnishment can be made only by court order.

G. MARRIAGE AND DIVORCE; ITS EFFECT ON THE CONSUMER

Because most of us rely upon credit to make at least some of our purchases, and at times those which arise in an emergency, it is important for everyone to establish a good credit history. Too often, married women neglect to do this, relying instead upon their husbands to take responsibility for credit purchases.

A decree of divorce usually assigns responsibility for payment of debts accumulated during the marriage. These marital debt provisions do not relieve either party of their duty to pay a creditor. This means that even if a husband is ordered to pay marital debts in the divorce decree, a creditor may look to the wife for payment. The only recourse for a wife who is confronted with this problem is to sue her husband.

H. AUTOMOBILE REGISTRATION AND INSURANCE

To register a vehicle and obtain a certificate of title, you must make application with the Department of Motor Vehicles. The filing fee is \$10.00 and all sales and property taxes on the vehicle must have been paid. You also must have insurance coverage which meets the minimum requirements of the Utah No Fault Insurance law or provide a bond. The registration card issued by the Department of Motor Vehicles must be carried in your car at all times.

As indicated in your Street Law text, no-fault laws allow settlement of a claim without determining which party is at fault. No fault benefits are limited to \$2,000 per person for medical expenses, disability benefits of 85% of lost income up to \$150 per week, funeral expenses in the amount of \$1,000 per person and \$2,000 in death benefits. These benefits apply only to personal injuries. Despite the requirement that no-fault insurance be maintained, almost one third of all Utah drivers are uninsured. Failure to maintain insurance or post a bond will result in loss of your driver's license.

APPENDIX

Organizations to Know - Chapter Four

1. Department of Business Regulations
Consumer Affairs Division
330 East 400 South, Salt Lake City, Utah
533-6441
2. Consumer Protection & Information
State of Utah --
 - a. Alcoholism & Drugs
554 South 300 East, Salt Lake City, Utah
533-6532
 - b. Automobile Sales
Capitol Building, Salt Lake City, Utah
533-5821
 - c. Contracting-Home Building & Home Repairs
330 East 400 South, Salt Lake City, Utah
533-5761
 - d. Credit
10 West 300 South, Salt Lake City, Utah
533-5461
 - e. Food Sanitation & Labeling
Capitol Building, Salt Lake City, Utah
533-5421
 - f. Insurance
275 East 200 South, Salt Lake City, Utah
533-5611
 - g. Mobile Homes & Recreation Vehicles
330 East 400 South, Salt Lake City, Utah
533-5511
 - h. Real Estate
330 East 400 South, Salt Lake City, Utah
533-5661

- i. Retail Sales
330 East 400 South, Salt Lake City, Utah
533-6441
- j. Securities
330 East 400 South, Salt Lake City, Utah
533-4239
- k. Television Sales & Service
330 East 400 South, Salt Lake City, Utah
533-5711
- l. Utilities
330 East 400 South, Salt Lake City, Utah
533-5517
- m. Weights & Measures
Capitol Building, Salt Lake City, Utah
533-5421
- 3. Small Claims Court
(Fifth Judicial District)
451 South 200 East, Salt Lake City, Utah
535-6902
- 4. Credit Bureau of Salt Lake
Consumer Relations
295 Jimmy Doolittle Road
Salt Lake City, Utah
355-5917
- 5. Consumer Credit Counseling Service
220 East 3900 South, Salt Lake City, Utah
266-0064
- 6. Family Financial Counseling Center
3480 Washington Blvd., Ogden, Utah
393-8697

Chapter Four

CONSUMER LAW

"Where You Live" Questions and Answers:

1. What governmental organizations in Utah make or enforce laws affecting consumers?

See Appendix. Law-making bodies such as the State Legislature, County Commissions, City Commissions and City Councils. Law enforcement bodies include state and local law enforcement agencies; state, county, municipal, intergovernmental, health and regulatory agencies; state and local courts.

2. Is there a small claims court in your community? If so, where is it located? What is the filing fee? What is the largest amount of money that can be awarded? Are lawyers permitted in this Court?

Small claims courts are located throughout Utah in circuit courts and county and municipal courts. In the Salt Lake City area, it is located at 451 South 200 East (Fifth Judicial District - phone 535-6902).

The filing fee is \$7.50, plus mileage for serving the subpoena. The largest amount of money that can be awarded is \$400.00. Lawyers are not barred from small claims court; however, they seldom are used.

3. Is there a repair and estimate law in Utah? If so, how does it work?

In Utah, consumers are entitled to a written estimate of charges for repairs which exceed \$25.00. Such an estimate must be required by the consumer, rather than being given automatically by a merchant or mechanic. Once a written estimate is obtained, the consumer must authorize any additional charges which exceed 10% of the estimate. If only an oral agreement is given, the business is not required to contact you to authorize additional charges, even if the charges exceed 10% of the original estimate.

4. What agencies and organizations in your community provide financial counseling services? Do they charge a fee for their services?

Numerous private agencies are listed in the Yellow Pages under "Financial Planning Consultants" and "Financing Consultants." Fees are charged by these agencies. Several non-profit agencies are listed under "Debt Adjusters." In the Salt Lake area, Community Consumer Credit Counseling Service of Utah offers services ranging from no fee in hardship cases to a maximum of \$10 per month. In Ogden, the Family Financial Counseling Center offers similar services. (See Appendix for addresses and phone numbers.)

5. When buying a car in Utah, what procedures must you follow to register the car and obtain license plates?

To register a car and obtain a certificate of title, you must make application with the Department of Motor Vehicles. There is a fee of \$10.00 and all sales and property taxes on the vehicle must be paid. License plates will thereafter be issued.

6. Does Utah require insurance coverage on all registered cars? If so, how much insurance must be carried? How much is insurance likely to cost a seventeen-year-old?

Yes, Utah law requires that all registered cars have insurance coverage which meets the minimum requirements of the Utah No-Fault Insurance Law or provide a bond. At the present time, these minimum requirements include \$20,000 and \$40,000 bodily injury and \$10,000 property damage. Yearly rates for a seventeen-year-old male would be approximately \$1,008.00 as "principal driver" and \$626.00 as an "occasional driver."

CHAPTER FIVE

FAMILY LAW*

A. GETTING MARRIED

1. Formal (Ceremonial) Marriage

In Utah both males and females may marry at the age of eighteen without the consent of their parents. With parental consent the minimum legal age for marriage is sixteen. A person under sixteen years of age may marry if a licensed physician issues a certificate of pregnancy to the county clerk, the parents consent to the marriage and the individuals marrying are at least fourteen years old.

Unlike some states, Utah requires no waiting period before a marriage license may be issued. If the marrying couple satisfies the blood test, age, residency and other requirements, the county clerk may issue a marriage license on the same day the application is made. However, the license is valid for only thirty days. If the couple fails to marry within this period, they must apply for a new license.

A marriage ceremony may be performed by a minister or priest of any church (including bishops or other designated authorities of the Church of Jesus Christ of Latter-day Saints), a justice of the peace, mayor, judge or county clerk.

2. Common Law Marriage

A common law or informal marriage is one not solemnized in the ordinary way and is created by 1) an understanding between the parties to live together as man and wife, 2) their actual cohabitation, and 3) recognition of their marital status by the state where they reside. Common law marriages are not recognized in Utah when the parties initially reside in Utah; however, such marriages

* This chapter was written by Ronald W. Eubanks, Esq., Union Pacific Railroad Company, Salt Lake City, Utah, and David S. Dolowitz, Esq., of the law firm of Parsons, Behle and Latimer.

are recognized in Utah if the marriage was properly created in another state permitting common law marriage. If a Utah resident goes to a state which recognizes common law marriage for the sole purpose of entering into a common law relationship and returns to Utah, the marriage will not be recognized as valid.

B. ENDING MARRIAGE

1. Ending Void and Voidable Marriages

Utah does not recognize marriages (a) involving incest; (b) where at the time of the marriage one party is infected with syphilis or gonorrhea that is or may become communicable; (c) where one party has a living, undivorced spouse; (d) where an unauthorized person solemnized the ceremony (except in situations where the parties honestly believed that proper authority existed; or (e) where one party's divorce to a previous spouse has not become final at the time of the second marriage. A marriage involving one of the above elements is void and without legal force or effect. In other words, the law treats the couple as though they were never married, although a court has the power to divide property, award support and make orders respecting children.

Marriages induced by fraud or coercion or which involve persons who are under age or physically or mentally incapacitated are voidable under Utah law. That is, these marriages are considered valid unless one or both parties ask the court to grant an annulment. Once annulled, the law considers the marriage to have never existed. Courts generally will not annul a voidable marriage if children are born or conceived during the marriage. Rather than annulling the marriage, the court will most often end the marriage by a divorce proceeding just as though the marriage had been valid.

2. Divorce

A divorce is a court decree terminating a marriage. A Utah resident may obtain a divorce on any of the following grounds: (a) impotency on the part of a spouse at the time of the marriage, (b) adultery by a spouse during the marriage, (c) willful desertion by a spouse for more than one year, (d) failure of a spouse to provide the other with the common necessities of life, (e) habitual

drunkenness of a spouse, (f) conviction of spouse of a felony, (g) cruel treatment of one spouse by the other to the extent of bodily injury or great mental distress (this is most commonly used as a ground for divorce), (h) living three years without cohabitation under a decree of separate maintenance, (i) permanent insanity of a spouse.

Unlike some states, Utah does not allow "no-fault" divorces. The court will not grant a divorce unless it makes a finding of fault on the part of one of the parties. If the court considers both parties to be at "fault," the divorce may be granted to each. It should be noted, however, that the party or parties "at fault" will not be deprived of his or her share of marital assets.

In order to obtain a divorce in Utah, one of the parties must be a bona fide and actual resident of the county where the action is filed for three months prior to the time the action is brought.

The Utah courts will not usually conduct a divorce hearing or trial until at least three months after the complaint for divorce has been filed. Evidence is taken on the issues set forth in the complaint at the time of trial. Sometimes the parties will have agreed on the property settlement by the time the hearing takes place. If the court feels that the agreement is fair to all parties involved, including children of the marriage, a decree of divorce will be granted based upon the terms of the parties' agreement. If the parties seeking divorce are unable to reach a property settlement agreement, the court will conduct a trial and the parties present evidence to support their positions. The court then decides the issues of child custody, property division, child support payments and alimony. The court's decision with respect to these matters is set forth in the decree of divorce, which becomes final not less than three nor more than six months after it is signed by the judge, unless the court at its discretion waives any waiting periods required by the statute.

The period between the time the divorce decree is signed and the time it becomes final is called the "interlocutory period." If the couple reunites during this period, the divorce does not become final, and the marriage is not terminated.

3. Legal Separation

Either spouse may file an action for separate maintenance in Utah. Unlike a divorce, a separate maintenance decree does not terminate the marriage. The parties are merely living apart under terms decided by the court. To obtain such a decree, one spouse is required to show (a) desertion without good and sufficient cause or (b) failure of the other spouse to provide adequate support. In a separate maintenance action the court has the power to dispose of property, determine custody of children and award support and alimony payments. Unlike an action for divorce, it is not necessary for the plaintiff to be a three-month resident of the county where the action is filed.

4. Custody of Children

The courts have the authority to determine which parent shall retain custody of the children in both divorce and separate maintenance actions. The law in Utah has traditionally favored the mother, but under present law parents are considered to have an equal right to custody of their children. The welfare of the child is considered to be the most important determining factor in a custody dispute. A request by an older child (10 years or older) that he be placed with a particular parent is usually given consideration by the court but is not controlling on the issue. The court has the power to give a third party custody where the court finds that neither parent is fit to retain custody.

5. Child Support, Alimony and Property Division

The court may make such orders regarding custody of the children, division of property, and support of the parties and their children as it considers fair and reasonable. The court always retains the authority to make subsequent changes in its original order when circumstances make such changes necessary; however, questions of property division are usually considered final unless appealed within 30 days from the date the decree becomes final. The court will order visitation to the non-custodial parent and may award visitation to grandparents. The normal provision for visitation awarded by the court is "reasonable visitation rights," unless the court finds such visitation rights to not be in the best interest of the child.

The court may order either spouse to pay child support and may award alimony to either spouse. In deciding whether alimony should be paid and in what amounts, the court considers the following factors: (a) the property of each spouse, (b) the ability and opportunity of each spouse to earn income, (c) the health of each spouse, (d) the station in life of each spouse.

6. Obtaining the Services of an Attorney

If a Utah resident cannot afford to pay an attorney to obtain a divorce, he or she may qualify to receive free legal assistance from various legal aid programs operated in the State. Among the agencies providing such services are the Legal Aid Society and Utah Legal Service Offices. If a person can afford a private lawyer but does not know one, he may contact the Lawyer Referral Service of the Utah State Bar for suggestions.

C. RIGHTS AND DUTIES OF PARENTS AND CHILDREN

1. In General

The age of majority in Utah is 18 for both males and females. The marriage of a minor automatically terminates his minority status.

Parents are required to send their children (ages 6 to 18) to public or (accredited) private schools. Children over 16 years of age who have completed the eighth grade are excused from mandatory attendance if they are employed, but they are still required to spend 144 hours per year in class.

A husband and wife are equally obligated to provide adequate and proper support for their minor children. Parents may be held criminally responsible for their willful failure to support their children. The obligation to support minor children may be terminated only by adoption of the children by other individuals. This support obligation does not extend to children who have reached their majority by marriage.

A parent (or any adult) who physically abuses a child may be held criminally and civilly liable for such actions; a person convicted of child abuse may be fined and sentenced to prison. Both district and juvenile

courts have authority to protect an abused or neglected child by appointing a guardian for the child, by awarding custody of the child to a third party and by such other orders as the court deems necessary to protect the child's interest.

2. Rights of Illegitimate and Adopted Children and Stepchildren.

Utah laws protect the rights of all children living in Utah, including illegitimate and adopted children. The father of an illegitimate child (born out of wedlock) is responsible for all expenses relating to the birth, education and maintenance of the child. An action to compel the father to furnish these expenses may be brought by the mother, the child or a state agency. The father may also be responsible for all expenses incurred on behalf of his child within four years prior to the time an action is brought.

An action may be brought to determine the identity and responsibility of the father of a child within four years after birth (paternity suit). The marriage of the child's actual parents legitimatizes a child born out of wedlock.

Illegitimate children may always inherit from their mother on an equal basis with legitimate children. An illegitimate child may inherit from the father only when his parents have married or when paternity has been established by a court of law.

Utah law recognizes rights and duties between a stepparent and a stepchild. Accordingly, a stepchild must be supported by a stepparent while residing in the household of the stepparent. This obligation ends if the natural parent and stepparent separate and file an action to terminate the marriage. If there is a close bond between a stepchild and a stepparent, visitation rights may be awarded and a stepparent may voluntarily support a stepchild after the parent-stepparent marriage ends.

A minor child may be adopted by an adult person provided: (a) the adopting parent is at least 10 years older than the child, (b) the adopting couple consent to the adoption; (c) the natural parents of the child consent to the adoption (except an adoption may take place without the consent of the natural parent where the natural parent

has failed to support and maintain a meaningful relationship with the child) and (d) the adoptive child consents if over 12 years of age. Adoption gives a child the name of the adopting parent and all legal rights and duties of a natural child.

Once an order of adoption has been entered by the court, all records pertaining to the adoption are sealed and may be opened only by order of the court. The Department of Records is authorized to issue a new birth certificate of the adopted child, stating the adopting parents to be the natural parents.

3. Government Support for Needy Families

The Utah Public Assistance Act of 1961 provides a broad range of social services available to needy residents of Utah. Unemployment compensation benefits are available to employees who lose their jobs and are unable to find employment. General assistance programs provide financial and medical services to the poor, elderly or disabled and to dependent children in need of care. These programs are normally administered by the Utah Department of Social Services or the Industrial Commission of Utah.

4. Inheriting Family Property

Under Utah law any person 18 years of age or older who is of sound mind may make a will. The will must be in writing, signed by the person making the will, and either witnessed by two persons over 18 years of age or be in the handwriting of the person making the will.

If a Utah resident dies without a will, their property is distributed to their spouse and children. If there is no living spouse or child, it is distributed to parents. If parents are not living, the property is distributed to the decedant's brothers and sisters. If there are no living brothers or sisters, the property is distributed among other relatives, and finally, if there are no surviving relatives, the decedant's property is turned over to the state.

5. Birth Control and Abortion

Prophelactics may be purchased by anyone in Utah. Prescription drugs affecting birth control can only be obtained with a doctor's prescription.

Abortion is lawful generally only in situations where the woman is in the first three months of pregnancy, and, unless she is 18 or over, emancipated by a court order because of special considerations and her parents have been notified of her intention to be aborted. Parental permission is not required. Under more stringent requirements an abortion may be obtained during the second three months of pregnancy.

(iii) Abortion and Birth Control

A constitutional right to privacy was enunciated in Roe v. Wade, 410 U.S. 155 (1973), where a woman desiring an abortion attacked the constitutionality of Texas statutes making the procurement of an abortion a crime. The Supreme Court declared the statutes violative of the right of privacy, "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action."

Similarly, the Supreme Court has held that a constitutional right of privacy is violated by a criminal statute prohibiting the use of contraceptives. Griswold v. Connecticut, 381 U.S. 479 (1965) (involving married persons); Eisenstadt v. Baird, 405 U.S. 438 (1972) (involving unmarried persons).

Several cases arising in Utah have dealt with the sensitive issues of abortion and birth control. Three of the major cases are summarized as follows:

T. H. v. Jones, 425 F.Supp. 873 (D. Utah 1975), declared that the constitutional right to privacy was violated by a Utah statute requiring parental consent before minors could receive family planning services from the Utah Planned Parenthood Association.

L. R. v. Hansen, Civil No. C-80-0078J (D. Utah, Feb. 8, 1980), held a Utah statute requiring a physician to notify, if possible, the parents or guardian of a minor upon whom an abortion is to be performed does not apply to emancipated minors and that, if so applied, it would be unconstitutional.

H. L. v. Matheson, 101 S.Ct. 1164 (1981), held as constitutional the parental notification statute at issue in L. R. v. Hansen. The United States Supreme Court

indicated in that case that a state may require such notification if the minor girl is unemancipated, living with and dependent upon her parents, but that such a statute may be unconstitutional if applied to emancipated or mature minors.

6. Guardians, Foster Homes, Child Care Institutions

If, for some reason, a parent is unwilling or unable to care for their children, Utah law provides that the court may appoint a guardian to protect the child's interests and welfare. A relative of the child, the child himself if over 14, or the Department of Social Services may petition the court to appoint a guardian. If permitted by the court, a minor over the age of 14 may choose his guardian. A guardian's power is terminated when (a) ordered by the court, (b) the minor reaches 18 years of age, or (c) the minor married.

When there is no one available or willing to assume the role of guardian, the court will appoint the Department of Social Services as guardian, and the Department will then place the minor child in a foster home or, if none is available, in a child care institution.

APPENDIX

Organizations to Know--Chapter Five

Birthright of Salt Lake
559 3rd Avenue
Salt Lake City, Utah 84103
531-6090

Catholic Community Services
333 E. South Temple
Salt Lake City, Utah 84111
328-8641

Children's Service Society of Utah
576 E. South Temple
Salt Lake City, Utah 84102
355-7444

Family Support Center
2020 Lake Street
Salt Lake City, Utah 84105
487-7778

Industrial Commission of Utah
350 East 500 South
Salt Lake City, Utah 84111
533-5552

Lawyer Referral Services
Utah State Bar
425 East 100 South
Salt Lake City, Utah 84111
531-9075

Legal Aid Society
211 East 3rd South
Salt Lake City, Utah 84111
328-8849

Planned Parenthood
28 East 2100 South
Salt Lake City, Utah 84115

Primary Children's Medical Center
320 12th Avenue
Salt Lake City, Utah 84103
363-1221

Rape Crisis Center
776 West 200 North
Salt Lake City, Utah 84116
532-7273

Utah Legal Services
352 Denver
Salt Lake City, Utah 84111
328-8891

Utah State Department of Social Services
Children, Youth and Families Division
150 W. North Temple
Salt Lake City, Utah 84103

Utah State Juvenile Court Administrator
339 South 600 East
Salt Lake City, Utah 84102
533-5254

Utah Women's Clinic
515 South 400 East
Salt Lake City, Utah 84111
531-9192

You're In Charge, Inc.
1820 Laird Avenue
Salt Lake City, Utah 84108
582-1898

YMCA
Women in Jeopardy Program
322 East 3rd South
Salt Lake City, Utah 84111

Chapter Five

FAMILY LAW

"Where You Live" Questions and Answers:

1. a. What is the minimum age for getting married in Utah?

14 years

- b. What is the age under which a couple must have their parents' permission to marry?

16 years

- c. Which relatives are not allowed to marry in Utah?

Marriage is prohibited with ancestors, descendants, brothers, sisters, of half or whole blood, first cousins, uncles, aunts, nephews, nieces, persons related up to but not including fifth degree of consanguinity (of the same blood or origin).

2. a. Where does a person go to obtain a marriage license in your state?

County Clerk

- b. Is a physical exam or blood test required?

Only a blood test is required.

- c. Is there a waiting period before one can get married? If so, how long is it?

There is no waiting period after obtaining a license.

3. Does the law in Utah allow common law marriages? If so, how long must a couple live together to make the common law marriage valid?

Common law marriages are invalid, unless entered into outside Utah where such marriages are valid.

4. a. What programs are available in your community to help abused women?

The Y.W.C.A. has a program entitled "Women in Jeopardy." (See additional list of agencies in Appendix for address and telephone number.)

- b. Are there facilities where abused women can go if they decide to leave home?

The "Women in Jeopardy" Program has four locations in the state of Utah: one each in Ogden, Price, Vernal and Salt Lake City. Each has overnight facilities.

5. a. Does your state have a neglect or child abuse law?

Yes

- b. Who is required to report evidence of child abuse in your state?

Any adult who has reasonable cause to believe that abuse has been inflicted on a child; specifically family members, doctors, nurses, teachers.

6. a. What marriage or family counseling agencies exist in your community?

Some of the organizations offering counseling are:

See Yellow Pages under "Mental Health Services."

The Assertion Training Institute
Child Psychiatry - Department of Primary
Children's Medical Center
The Children's Center
Davis County Mental Health
Family Counseling Center
Intermountain Psychiatric Clinic Inc.
Rocky Mountain Family Institute
Western States Family Institute
U. of U. Counseling Center

Most counties have their own services or are
a part of a regional mental health and
counseling program
Many religious denominations have these
services available

b. Are these privately or publicly operated?

The above list represents organizations which are
both privately and publicly operated.

c. How much do they charge?

Charges vary on a sliding scale based on ability
to pay to hourly rates.

7. a. What are the grounds for divorce in Utah?

Impotency; adultery; desertion; neglect;
drunkenness; felony conviction; physical cruelty;
mental cruelty; separated; insanity.

b. Does Utah allow no fault divorce or divorce
by consent?

No

c. How long does it take to obtain a divorce in Utah?

Six months

8. a. Where in your community does a person apply for
medicare and social security benefits?

Social Security Administration
Murray Office: 6065 South 300 East
Murray, Utah 84107
355-3500

Salt Lake Office: 461 South 4th East
Salt Lake City, Utah 84111
355-3500

b. What is the procedure for applying?

The following items are needed when applying for
benefits: W-2 forms for the last two years prior

to retirement; social security card; and certified birth certificate. If a wife is applying, a certified marriage certificate and the husband's social security number are also needed. In some cases, military discharge papers are needed.

9. a. What are the maximum and minimum benefit levels per month that a person in Utah can receive for unemployment compensation?

Minimum of \$43.00 per month; maximum of \$713.80 per month.

- b. Where does a person apply for this compensation?

Unemployment Office
1234 South Main
South Floor
Salt Lake City, Utah 84115
533-2593

10. a. What government job programs exist in your community?

The Cata Program in Salt Lake County and Job Corps Program in Weber County are both being phased out.

- b. Are there any government-operated housing projects in your area?

Yes, both for the elderly and low-income families.

11. a. How old does a person have to be to write a will in your state?

18 years old

- b. How many witnesses are required?

Two

CHAPTER SIX

HOUSING LAW*

A. LANDLORD-TENANT RELATIONS

1. Introduction

Although the amount of money at stake may not be as much when renting a place to live as when buying a home, there is just as much room for negotiation. Many of the same details should be discussed and much the same inspection should be made when renting as when buying. Many people overlook this and end up dissatisfied with their renters or landlords.

This section on renting will explain the particular Utah state laws which regulate the landlord/tenant relationship. It will discuss the same topics as the Street Law section on renting from the point of view of applicable Utah law, if any. The Utah law regarding the rental relationship was written both long ago and recently. Old and new laws in this area contain many "legal" and old-fashioned words which will be underlined and defined in the glossary.

At a minimum a landlord expects a renter to pay the rent on time, to take proper care of the apartment, to advise the landlord of maintenance problems and to carry out the terms of the rental agreement.

At a minimum the renter expects a clean apartment where the appliances and utilities work properly and to otherwise have the "quiet enjoyment" of the premises. The renter expects the landlord to keep up the maintenance on the building/apartment and to live up to the terms of the rental agreement or lease.

Good communication between a landlord and tenant helps avoid many problems. If the tenant has an emergency and

* This chapter was written by Suzanne Mellor of Utah Legal Services, and Douglas Matsumori of the law firm Ray, Quinney and Nebeker.

can't pay his rent on time, the landlord will usually make arrangements for late payment if the tenant comes to him in good faith and explains the problem. If the tenant is doing something the landlord doesn't like (keeping a pet or not watering the lawn, for example), the landlord should tell the tenant before the problem gets out of hand. Most landlords and most tenants are responsible and carry out their agreements. Some landlords and some tenants are not responsible and will not follow through. If you have a "bad" landlord or one you cannot get along with, it is best to move, if possible. In some situations it would be extremely burdensome for the tenant to move, and he should attempt to get along with the landlord. If, as a landlord, you have a bad tenant, it is best to evict that person.

Questions

- 1) If you are renting a place to live now, do you know your landlord?
- 2) Do you know how to reach him or her?
- 3) Do you know his or her phone number and address?
- 4) Is your landlord the owner of the property or a hired manager?
- 5) Whom should you call if there is an emergency?
- 6) If you are a landlord, do your tenants know how to reach you? Do they know whom to call in emergencies?

2. The Rental Agreement or Lease.

a. Discussion of the Terms. It may seem obvious, but many people do not discuss the terms of the rental agreement in much detail. Whether your agreement is oral or written, certain terms must be discussed.

1. How much is the rent? When is it due? Are late charges added if not paid on time? Can you afford it? What is the condition of the premises? Have you inspected them?

2. How much is the deposit, if any? What is it for? A cleaning deposit assures the landlord that money will be available for cleaning if the tenant leaves the place dirty. A security deposit secures that the tenant will live up to his part of the bargain. Is any part of the deposit nonrefundable? If so, and if the agreement is in writing, Utah law requires the landlord to notify the tenant in writing when the tenant moves in that part of the deposit is nonrefundable. It is unclear, if the rental agreement is oral, whether the notice must be in writing.

3. Who pays for the utilities? What utilities are there? How will they be paid? Usually the tenant has the utilities for the apartment put in his or her own name and is billed directly by the utility company and pays directly to it. Sometimes, however, a landlord will come up with complicated systems of paying which the tenants feel are unfair. This often happens when there is only one gas meter for a duplex or fourplex, etc. The landlord may bill the tenants on the basis of square footage when there are four or five people in one unit and only one or two in another. How would you handle this situation? See also the discussion of utilities in the Consumer Section.

When the tenant agrees to pay for the utilities, what is he agreeing to pay? Gas? Electricity? Water and sewage fees? Garbage collection?

4. Complex Agreements. Some landlords and tenants make some rather complicated rental agreements. For instance, the landlord may accept all or part of the rent in improvements to the property to be made by the tenant or for managing the apartments. Often each party believes he or she fully understands how the agreement will work and what is expected of them. More often than not, however, it soon becomes apparent that misunderstandings have occurred which lead to bad feelings and distrust. Complex agreements should always be in writing.

b. Oral Agreements.

Many rental agreements are arranged orally and not written down. Usually this occurs where the tenant is renting on a month-to-month basis. If you enter into an oral agreement with a landlord or tenant, be sure to discuss the different terms stated above. There is

nothing "wrong" with an oral agreement; it can be upheld by the courts even though it is not in writing. An agreement for a rental period of a year or more must be in writing or the courts cannot enforce it. A court would probably interpret such an agreement as if it were a month-to-month agreement.

If you have an oral agreement with your landlord or tenant, what is your understanding of the terms? What other information would you like to have?

c. Written Agreements.

If an agreement is in writing, it usually was the landlord who wrote it. Therefore, it will probably protect the landlord's interests more than the tenant's. If you have a written lease or rental agreement with your landlord or tenant, which provisions favor the landlord, which favor the tenant? Compare your agreement to the sample on pages 232-233 in Street Law.

In general, people can agree to almost any terms. However, the law protects you from contracting away some of your rights. In rental agreements you can agree to terms which will expand your rights, but those which restrict your rights will probably not be enforced by the courts. For example, in Utah both the landlord and the tenant are required by law to give the other party 15 days notice to terminate the agreement. The tenant must tell the landlord he is moving at least 15 days before the end of the rental period (usually the 15th of the month), and the landlord must give a tenant a "No Cause Eviction Notice" at least 15 days before the end of the period. The written agreement may require 30-days notice by either party, but it could not provide for 10-day or 5-day notice.

Both the landlord and the tenant should have a signed copy of the lease or rental agreement.

d. Paying the Rent

A tenant should not pay rent in cash without getting a receipt signed by the landlord or their agent.

If possible, paying rent by money order should be avoided unless it is delivered personally and a receipt is received. If a money order is lost in the mail, it takes

up to 6 months to trace. In the meantime the landlord will want the rent legitimately due. This can result in your having to make 2 rent payments or in being evicted for nonpayment of rent. Many landlords don't believe tenants who tell them the money order was lost.

Payment by check gives the tenant an automatic receipt when the landlord cashes it. Payment on a check can be stopped if it gets lost in the mail or otherwise misplaced.

e. Deposits.

The new Utah landlord/tenant law requires the landlord to return all the refundable deposits to the tenant within 30 days of the termination of the tenancy or 15 days after the landlord receives the tenant's new address, whichever is later. It is the tenant's responsibility to provide the landlord with his new address. If the landlord decides to keep some or all of the deposit, he must detail the expenses he has deducted from the refund. Legitimate reasons for your landlord to keep part or all of your deposit might be if you owed unpaid rent, if your agreement or lease provided for possible deductions for cleaning or maintenance.

The law has no built-in punishment for landlords who do not follow this procedure. If the landlord refuses to return the deposit, the tenant will have to sue him in Small Claims Court.

The Utah law does not require the landlord to keep deposits in separate accounts and to give the tenant interest on his money.

f. Responsibility for Repairs and Maintenance

The general rule is that the tenant is responsible for the rented premises and the landlord for common areas like hallways and grounds. Usually the tenant will be held responsible for fixing items which he caused; for example, when the sink backs up because the tenants wash their hair in it, or when the toilet clogs because the tenant's toddler wanted to see its toys disappear. On the other hand, large maintenance or structural problems should be handled by the landlord; for example, when the plumbing doesn't work properly because the system is old or wasn't installed correctly.

If the items needed repair before the tenant moved in, the repairs are the landlord's responsibility. If the problem arose during the tenant's occupancy, the tenant may be held responsible.

If a tenant likes an apartment but wants the locks repaired or mended and the landlord agrees to do it, the tenant should get the landlord to put it in writing that the locks will be repaired by a specific date. The landlord may authorize the tenant to make the repair and to deduct any expense from his/her rent (backed up by receipts, of course). Any agreements to repair made by the landlord and tenant at the time the tenant moves in should be put in writing.

Utah, unlike many other states, does not have a "repair and deduct" law. This law allows tenants to make small repairs themselves, up to a limited dollar amount within a given period of time, and deduct the expense from their rent. Remember - in Utah the tenant's duty to pay rent in full and on time is not dependent on the landlord making repairs.

If a tenant has occupied the apartment for several months and finds that some repairs need to be made, he should write the request to the landlord and await a response. If nothing is done, write a second letter. If the second letter gets no response, the tenant should try to contact the landlord personally. If the tenant wants to take the chance, he could go ahead and incur the expense, deduct it from the rent and wait to see what happens. If the landlord accepts the rent less the expense as full payment, that is fine. If not, and the landlord doesn't have to accept it, the tenant should be prepared to move in a hurry or to pay the rest of the rent when it is demanded.

If you are not sure who should be held responsible for making a certain repair, how would you find out?

3. Problems

a. Abandonment.

A new Utah law states that the landlord can assume the tenant has abandoned, or moved out without informing the landlord, if:

- the tenant does not tell the landlord he will be away, AND;
- the tenant does not pay the rent within 15 days of when it is due, AND;
- the tenant has left behind furniture and belongings.

Abandonment can also be assumed if:

- the tenant does not tell the landlord he will be away, AND;
- the tenant does not pay the rent the day it is due, AND;
- the tenant has moved all or most of their belongings out of the property.

If the tenant abandons the property or the landlord properly assumes the tenant has abandoned, the landlord may retake the property and rent it to someone else. The tenant is responsible for any costs the landlord incurs in re-renting the dwelling, plus any rent the tenant would have paid under the terms of the lease or rental agreement.

If the tenant abandons the property and leaves behind personal property, the landlord can remove the property and have it stored. The tenant will be responsible for paying moving and storage costs. The landlord must make "reasonable" efforts to contact the tenant and let him know where the possessions are being held or stored.

If the tenant's property is not recovered within 30 days, the landlord may sell it and apply the money toward any rent owed.

This is another situation where communicating with the landlord can save the tenant a lot of trouble and possibly a lot more money.

b. Termination.

Most rental situations will be terminated by one of three different methods: 1) proper notice, as required by state law or the written agreement, 2) expiration of the term of the agreement as specified in the lease, or 3)

eviction proceedings. Two "unlawful" methods are not uncommon: 1) the tenant breaks the agreement by leaving without proper notice or before the lease term is up, or 2) the landlord changes the locks. (Note that the word unlawful was used, not illegal. "Illegal" implies that an act was criminal and that the actor could be prosecuted and sent to jail. Although breach of the agreement and changing locks are not approved by the law, they are not criminal acts. They do give rise to civil, not criminal, liability and the actor can be sued for money.)

Proper notice requires notification of the other party at least 15 days before the end of the rental period or whatever amount of time was agreed to in the lease or rental agreement. Termination of a lease by the passage of time leaves a tenant in an uncertain position unless the consequences of termination are specified also. If a tenant's lease is about to expire, he should contact the landlord and attempt to renew or negotiate a different agreement. The eviction method of terminating a rental agreement will be discussed in the next section.

When a tenant unlawfully terminates the agreement by giving improper notice or leaving before the term of the agreement has expired, it could prove expensive. If the tenant can find someone willing to sublease, assuming it was all right with the landlord, or to take over the lease, the tenant would not be responsible for paying the landlord any more money.

However, if a tenant with a month-to-month agreement gives notice to the landlord on the first, pays only one week's rent, and moves out by the sixth or seventh, how much would the tenant owe the landlord?

If the tenant with a year lease moved out after 6 months, how much would the tenant owe the landlord?

The answer to both these questions is: it depends. It depends on how long it takes the landlord to re-rent. A landlord in this situation has a duty to mitigate the damages, to keep his losses as small as possible by re-renting as soon as possible. The landlord must advertise and attempt to rent the property as soon as possible. In the first situation, if the landlord rented the apartment on the 21st day of the month, the vacating tenant would have to pay 2 more weeks of rent, from the

7th to the 21st. In the second situation, if the housing market was depressed and the landlord couldn't find a renter for 3 months even though he tried, the vacating tenant would have to pay the 3 months rent. If, however, the tenant had found a suitable person willing to take over the lease, the landlord could not refuse unreasonably to rent to that person.

Sometimes when a tenant is behind in rent or the landlord and tenant just don't get along, the landlord will change the locks on the apartment to make the tenant move. This is "unlawful" behavior and is specifically prohibited by Utah law. However, the law has its drawbacks: it takes time to go to court. If the tenant didn't have the money to pay rent, he won't have the money to pay a lawyer. Free legal help is available to low income people in legal aid and legal services offices. Most of these offices are in large cities and would not be of much help to the tenant in this situation. The worst element of the lock-changing situation is, of course, that the tenant's belongings, including clothes, sometimes including important medicine, dentures, car keys and such, are locked in the dwelling. The landlord is holding the property for ransom by payment of back rent due. Even with a quick lawyer who would draft the necessary papers and get a Temporary Restraining Order signed by a judge, the process would take a couple of days, if not longer. Unfortunately, the quickest way to get the tenant's belongings back probably is to borrow the money and pay the landlord. This may not discourage the landlord from future unlawful evictions.

Sometimes, a landlord will take something of the tenant's until the rent is paid. The police would not arrest the landlord for stealing the tenant's property. They would say it is a civil matter and advise the tenant to see a lawyer. Again the law does not respond quickly to this situation. When a landlord takes property without legal process, it is called "conversion." It means that he/she has converted the tenants' property for their own use. The tenant can sue the landlord for conversion and ask for money damages as well as the return of the property.

If you were a judge and the facts of a case were that the tenant was behind in rent and the landlord changed the locks on the doors to the tenant's apartment and took, and

is still holding, all the tenant's property, how would you decide the case? Would you award money to either side? Would you change your decision if it were shown that the tenant didn't pay rent because there hadn't been heat in a week in the tenant's apartment due to malfunctioning of the furnace? Would it make any difference if the tenant withheld the rent because the landlord hadn't had the carpet cleaned as he said he would nor had he painted the bathroom the pale peach color the tenant wanted? What other facts, if any, would you want to know?

c. Eviction.

Eviction is a quick process by which a landlord can get his property back from the tenant. The eviction process, including any Court proceedings, can take as little as two weeks. Being left homeless is serious business, so a tenant should know how the process works. Landlords should know so they can do it properly.

Lawfully, a landlord cannot lock a tenant out of the rented premises, move the tenant out, or take any of the tenant's property before going through the correct legal processes. Another important thing the tenant should know is if the tenant is evicted, the judge will order him to pay the landlord treble or triple damages. Treble damages are figured by multiplying the daily rent by three for each day the tenant stayed in the rented premises after the day the eviction notice expired.

(1) Eviction Notices.

The first part of the eviction occurs when the landlord gives the tenant a written notice to leave the premises. This notice indicates that the tenant-landlord relationship has ended. There are four types of notices outlined in the Utah law which defines the eviction.

(a) Three-Day Alternative Notice. This is the notice the landlord must use if the tenant owes rent and he wants the tenant out so he can re-rent the place. It must say that the tenant must pay the amount owing OR leave within three days. If, within three days of receiving the notice, the tenant offers the money owing, the landlord must

accept it, and the eviction process is stopped. If the tenant does not offer the money within three days and does not move out, the landlord can go onto the next part of the eviction. If the tenant offers the money within three days and the landlord refuses to accept it, the tenant should save the money and not spend it. Proof that the tenant has the money and is willing to pay it to the landlord is a legal defense to a non-payment eviction suit.

(b) Three-Day Nuisance Notice. This is the notice the landlord must give the tenant if the tenant is disturbing his neighbors, wasting or damaging the property, or violating building or health codes. If you do not move out within three days of receiving this notice the landlord can go on to the next part of the eviction.

(c) Fifteen-Day Notice. This is the notice the landlord must use if, for no specific reason, he simply wants the tenant to move. Such a notice must be given to you at least fifteen days before the end of the rental period or it is not valid. If the tenant doesn't move out by the beginning of the next rental period, the landlord may continue with the next part of the eviction process.

(d) Notice to Comply or Quit. This is the notice the landlord must give the tenant if the tenant has broken any one of the provisions of the agreement. This notice must state that EITHER the tenant comply with the provisions of the agreement within three days OR the tenant must leave the premises within five days. If the tenant does not comply or leave, five days after they receives this notice the landlord may proceed with the eviction.

(ii) How Tenant Is Informed of Eviction.

If the tenant fails to comply with any of these notices which he has received, then he may be

subject to treble damages (three times the daily rent) at the end of the eviction process.

The landlord must give the tenant proper notice for each situation. He must also give the notice to the tenant in one of four ways, as provided by Utah law: (The giving of the notice to the tenant is called service: the tenant is served with the notice.)

(a) He can have someone give the notice to the tenant. The person does not have to be a sheriff or a policeman; or,

(b) He can send the tenant a copy by registered or certified mail to the tenant's home; or,

(c) He can put a copy on the tenant's door AND mail a copy to the address; or,

(d) He can leave a copy with someone at the tenant's home AND mail a copy to the address. He may leave the notice with a child at the home ONLY if the child is old enough to be responsible for giving the notice to the tenant.

"Unlawful detainer" describes the tenant's status after the eviction notice has expired. It means that the tenant is unlawfully or wrongfully detaining or holding the landlord's property. It is when the tenant is in "unlawful detainer" that he can be liable for treble (or triple) damages.

For example, if the rent is \$300 per month, the tenant is behind one month's rent. On the 5th of the following month (Tuesday) the tenant gets good service of a 3-day Pay or Quit Notice, and the tenant finally leaves on the 24th of the month. If the landlord follows through with the eviction, how much back rent and damages could the landlord be awarded?

\$300/month = \$10.00/day rent - \$30.00/day in treble damages

The tenant owes \$300 for one month:	\$300
The tenant owes \$10 x 10 for the days in the 2nd month before the notice expired:	100
Treble damages can be awarded for the 11th through the 24th or \$30 x 14:	<u>420</u>
Total which could be awarded against Tenant:	<u>\$820</u>
Total amount of actual rent owed (without treble damages): \$300 + (\$10 x 24)=	<u>\$540</u>

The above example shows clearly why treble damages are to be avoided.

d. The Summons and Complaint.

The second part of the eviction procedure is the beginning of a lawsuit by the landlord against the tenant. This is done by having the tenant served with a Summons and Complaint. These papers are legal documents. The delivery of the Summons to the tenant begins the lawsuit. The Summons tells the tenant that he is being sued and that to protect his rights he should "answer" the Complaint within a specific amount of time. The Summons does not tell the tenant what the lawsuit is about. In an eviction action the landlord can get time to answer the Summons reduced to three days. It usually is 20 days. To get this reduction of time, the landlord or his lawyer had to go personally to a judge and get the Summons signed by the judge. The tenant's copy of the Summons should have the judge's signature on it, be a copy of the original with the signature, or the person serving the Summons should have the original and show it to the tenant. Because eviction can be such a quick process, the courts want to make certain all the procedures are correctly carried out.

The Complaint which should be served with the Summons explains the lawsuit. It would state the facts according to the landlord: that the tenant and the landlord did have an agreement, that the tenant had not filled his part of the bargain by not paying rent (or whatever), that the landlord has terminated the relationship properly with the right type of eviction notice properly served. It would then state the amount of back rent owed, the amount in treble damages the landlord claimed and any amounts claimed for damage to property, cleaning, etc.

The tenant must respond with an "Answer" to the Summons and Complaint. He should contact a lawyer to do so. The tenant has the right to have his side of the story heard. However, if the tenant does not answer the Summons and Complaint, he will lose his right to have his story heard in trial. The judge will issue a Default Judgment in favor of the landlord and give him everything he asked for. If the tenant files an answer (by giving a copy to the court), he will be given a court date. At that time, the judge will give each side the opportunity to tell his story before making a decision and issuing a judgment.

The most important thing to do if served with a Summons and Complaint is to read them. It is amazing how many people will ignore them, hoping they will go away. Sometimes they are difficult to understand. Do not ignore them. If you do ignore them, the landlord will get everything he asked for and you will have given up your right to a trial.

If you cannot get a lawyer in time to answer a Complaint, copy down the top of the paper just as it is on the Complaint. The very top will show what court the lawsuit has been filed in. Right under it, on the left side, it will say Landlord v. Tenant, then usually a line, then on the right side it will say COMPLAINT and there will be a number. Copy all of that. Then continue your answer by stating whether you agree with or deny the statements in each paragraph of the complaint. Take it paragraph by paragraph. When you are through you can tell your side of the story, as briefly as possible. Make two copies: give the original to the court listed at the top; send a copy to the landlord's attorney; keep a copy for yourself. Try to find a lawyer. You will then be notified of the court date.

The next part of the process is the trial and the judgment. The tenant is sent a copy of the judgment. Usually the judge will tell his decision in court, then a document will be made up. If the tenant has been evicted, the judgment will order him to move out. If the tenant doesn't move out, it will order the Sheriff to move him. It is legal for the sheriff to move out the tenant the same day that the trial was held. The judgment will also order the tenant to pay the landlord any money owed to him, including treble damages.

If the tenant has a good defense to the landlord's eviction lawsuit, the tenant may win and be allowed to stay. In that case the landlord would probably be ordered to pay the tenant's expenses, including his attorney's fee.

e. Possession Bond.

A new Utah law allows the landlord another tool to get a non-paying or non-complying tenant out even faster. If the tenant answers the Summons and Complaint as previously discussed, he may be served with more papers. These papers would tell the tenant that the landlord has posted a "Plaintiff's Possession Bond." This means he has begun a legal process that speeds up the eviction process. Since this law is new, it is difficult to know how it will work in practice. Essentially the tenant must either move or post a like bond or request a hearing within six days of receiving notice of the Plaintiff's bond. (The plaintiff is the person who is suing; here it is the landlord. The Defendant is the person being sued; here the tenant.) If the tenant gets notice of such a bond, he should read the papers carefully and call a lawyer. Otherwise the sheriff could come to put him out on the street in six days. The idea behind the Plaintiff's Possession Bond is that the landlord thinks the tenant does not have a good defense to the eviction. He wants the tenant out of the rental property very quickly. Therefore, he goes to a judge and tells him what is going on and the basis for his claim against the tenant. He then asks the judge to set an amount of bond for the landlord to post. This amount is supposed to cover the tenant's expenses if the landlord is wrong and the tenant can show in court that he has the right to remain in possession.

4. Miscellaneous

a. Roommates

Disputes between roommates do not fall under landlord/tenant laws, but they cause a lot of distress. Essentially, if both roommates are on the lease or rental agreement or are parties to the oral agreement, each has as much right as the other to possession of the premises. If two roommates love their apartment but can no longer stand each other and each is living up to his/her part of

the bargain, the law will not award the "custody" of the dwelling to one over the other. If one of the roommates was carrying the total financial burden or doing all the work, the industrious one might have more of a claim to the apartment. However, that dispute is between the roommates and does not directly affect the landlord.

If, however, one roommate moves out, the remaining one must pay the landlord the total amount of the rent due, not just one-half. Even if the landlord knew when the roommates moved in together that their agreement was to share expenses equally, the landlord has the right to hold the roommates "jointly and severally" responsible for the rent. When a landlord rents to two or more people he is renting to them all together ("jointly") and to each one individually ("severally"). It is often very upsetting to a person whose roommate has moved out that the landlord still expects full rent.

b. Rental Agencies.

If you are looking for a place to rent, undoubtedly you will see advertisements from rental agencies. Before paying their fee, ask what their services are. Many people have paid fees to these agencies only to be handed lists of apartments for rent which are available in the daily newspaper for much less money.

c. Landlord's Lien.

A lien is a legal claim against someone's property. An example of a lien against real property (land) is a mortgage. When a person borrows money to buy a car, the bank has a lien on the car until it is paid for. This is an example of a lien against personal property (belongings other than land).

When a tenant moves into an apartment, his landlord automatically has a claim or lien on the tenant's personal property if he should fall behind in rent or cause damage to the apartment. However, the landlord cannot just walk into the apartment and take the tenant's things. He must get a Court Order which allows him to take and hold some of the property until the tenant pays what is owed. If the tenant cannot pay, the landlord may be allowed to sell the property. Things the landlord can take include televisions, stereos, vacuum cleaners, small appliances,

recreational equipment, etc. Things he cannot take include refrigerators, stoves, one sewing machine, laundry equipment, clothing and most furniture.

d. Hotels, motels.

Hotels and motels and other temporary lodging facilities do not come under the landlord/tenant laws. The people who manage or own these places are allowed to take and hold a customer's belongings without a court order when the customer owes them money. They are allowed to do this because the customer would be gone before they could get the court order.

Many places which call themselves motels do rent by the week or the month. Sometimes a court will hold the owners of these places to the landlord/tenant laws. The court would look to see if the services were like those of a motel or more like an apartment. For example, are kitchen facilities available, are maid services provided, are linen and towels provided, is the customer expected to pay daily, weekly, or monthly, etc? If the nature of the relationship is more of a landlord and tenant than an innkeeper and guest, the owner will be expected to follow the appropriate laws.

e. Public Housing.

Public housing is for low income people, and tenants in public housing are not supposed to pay more than 25-30% of their income for rent. The federal government subsidizes landlords so they can rent housing to low income people and still be assured a profit. Local housing authorities in Utah administer public housing and should be contacted for applications. However, waiting lists are so long in some parts of the state that people must wait one or two years for housing to be available.

Does your area have a public housing authority? The Housing Division of the Utah Department of Community and Economic Affairs can give assistance to people who want to set up a housing authority.

There are many different public housing programs. Sometimes the housing authority will build and manage their own units. Sometimes they will contract with a tenant and a private landlord in a three-way agreement:

The tenant rents from the landlord and pays him the usual 25-30% of his income. The housing authority makes up the difference between the tenant's payment and a fair market rent. There is a limit on what the housing authority will pay. Some people think that poor people are living in luxury under these programs. That is not true. Are any of these programs available in your area?

Housing in general is in a severe shortage today. It is much worse for those who have little money. This is creating some problems which we will all have to deal with. Our population is increasing, the space available for housing is decreasing, and the cost of housing is quickly rising. Everybody needs a place to live.

The following problem is posed for discussion. There are no right or wrong answers. In the Big City there are housing codes which require all rental housing to have certain facilities, including hot and cold running water and bathing facilities in each unit. Slumlord owns a lot of old houses and buildings which are in the old and run-down part of town. Many low income people rent from Slumlord. The housing code inspectors of Big City inspected one of Slumlord's buildings and found that the units didn't have bathtubs or showers in them. The residents were filling tubs or taking sponge baths. The landlord was ordered to install showers or tubs or to close the building to occupancy. The owner said that he could not afford to do that: The property wasn't worth it. If he installed bathing facilities, he would have to raise the rent a great deal, the tenants would move and no one else would rent the units. The building would be vandalized and the new tubs stolen. On the other hand, if the building were shut down he would be deprived of his little rental income unfairly. Another problem is that the people who live there cannot afford more than the \$50-\$80 per month they pay. Where would they find a place to live? Local public housing has a two-year waiting list.

Should the city force Mr. Slumlord to install bathing facilities? If it does, the building will close and 20 families will be on the streets looking for housing. Which is more important: Enforcing the housing codes or housing people? Are there any other solutions?

B. MOBILE HOMES IN MOBILE HOME PARKS.

In the past, mobile home owners who rented spaces in parks were subject to the same landlord/tenant laws as people who rented apartments. However, renting a space to put your dwelling on is very different and has very different problems from renting a dwelling to live in. Moving a mobile home is very expensive; it can cost between \$1,000 to \$2,000. It entails disconnections from all utilities and reconnections at the new location, taking down and putting up awnings and skirting. All these things are time consuming and costly. Renters of mobile home spaces became very concerned because they could be given a 15-day no-cause eviction notice. Park rules and regulations were changed often and some of the changes cost money. Often there were no leases, and with the separate rules the leases offered little protection anyway. So park residents got together and, by working with the park owners, got some legislation passed in 1981.

The new mobile home law does not allow no-cause evictions in parks. The only evictions allowed are for nonpayment, noncompliance with lease terms and rules, or for creating a nuisance or danger in the park. The residents now must be given 60 day notice of changes in rules and increases in rent.

However, if a resident gets behind in his/her rent, a 3-day notice can be served and the rest of the usual eviction process followed. Other than the different causes for eviction, the legal process followed after the notice is the same. It is more difficult to "evict" a mobile home than people. Therefore, the process, though the same, often takes longer. Park owners with the proper court authorization can have a mobile home moved out of the park. If it were taken to another park and set up, the home owner would be responsible for the cost. If the mobile home were taken and left in a lot somewhere, the cost would be added onto the judgment against the owner of the mobile home.

C. HOME OWNERSHIP

1. Introduction to Home Ownership.

The notion of out-right ownership of real property -- in particular "home ownership" -- is, in our day of high

costs and free use of credit, somewhat misleading. The rights which a typical home purchaser acquires in a home are really a mixture of rights and obligations, a good portion of which are really shared with a financing institution like a bank, savings and loan, mortgage company, or even another private individual. In some arrangements, the purchaser actually acquires a deed and title to the home. In other instances, the arrangement may call for the deed to be conveyed and title transferred only after the satisfaction of a series of contractual obligations, including the payment over time of the purchase price.

The State of Utah is no different from other places around the country. The use of mortgage financing is prevalent. That should not, however, be the basis for conjuring up in the mind of the prospective home buyer, a picture of the melodramatic "Black Bart" skulking the suburbs and subdivisions of Utah County or Salt Lake County, or preying upon the helpless farm widow in our rural counties. It is true that the lender who takes a mortgage on the purchaser's home as security for repayment of the loan of the money for the purchase is interested in profiting from his lending business. It is also true, however, that without the use of the mortgage and other related and similar instruments, home ownership even in this more limited sense, would be only for the wealthy.

Contemporary financing instruments, like the mortgage, the trust deed and the real estate contract - which will be discussed in more detail later - make it possible to enjoy the advantages of owning a home without the need of waiting many years to accumulate the necessary funds to make an out-right purchase. A purchaser can, using those instruments, exercise all of the rights of the out-right owner. The principal advantage of such ownership is that any appreciation in the value of the home becomes an asset of the owner. In the rental situation, the tenant does not benefit from such appreciation. (That appreciation in value above the mortgage obligation on the home is sometimes referred to as the owner's equity.) Another principal difference between renting and owning is that certain obligations associated with ownership are now the personal obligation of the owner. That is an advantage in that taxes assessed upon the home and paid by the owner are deductible expenses for federal income tax purposes. Likewise, a portion of the regular mortgage payments -

that part which is interest on the loaned money - is also a deductible expense. As a lessee, even though at the bottom line the rental payments are used by the landlord to pay the property taxes and, possibly, the interest on his mortgage of the leased property, no deduction for income tax purposes is allowed to the lessee or tenant.

2. The Process of Buying a Home.

a. Finding Your Home.

After making the decision first that home ownership is what is desired, and second, that sufficient resources (this includes a careful assessment of initial costs, including downpayment, closing costs, and moving expenses, and of the continuing obligations and costs of such ownership, including taxes, insurance, maintenance, mortgage service, furnishings, utilities, landscaping, etc.,) are available to handle the costs, the most exciting and most frustrating experience remains--that of finding the home which comes closest, within budget guidelines, to your dreams and desires.

In this state, as in others, the search process can be done on your own or through the use of brokers and salesmen in the business of bringing buyers and sellers together for a commission. Utah requires that persons involved in arranging sales, leases, and other transfers of real property (like homes) for compensation must be licensed. As a minimum, certain educational and testing requirements must be met before a person may engage in selling real estate. Those satisfying such minimal requirements are required to have a salesman's license issued only under the sponsorship of a licensed broker. A broker is granted a license only after satisfying additional educational and experience requirements. If you determine to utilize a person in the real estate business to assist in the finding process, remember to do some shopping. Neither the issuance of a sales or broker license is a guaranty of competence. Remember that even though the amount of the commission for such services comes out of the proceeds received by the seller, a wise seller will price his home so as to allow a pass through of the commission to the buyer. Since you are paying for the service, be a wise shopper - be a very careful and discriminating shopper. Also remember, demand the best in services from the salesman (also known as "agent") and the broker through whom you work.

In addition to the general knowledge and expertise which your broker and agent bring to you in your search for a home, because of the use of listing contracts, they have an additional "leg up" on the freelancing private buyer. A listing contract is simply a seller's contract with the broker or agent that the broker or agent will sell the home on behalf of the seller for a commission. There are three general types of listing agreements. First, an "exclusive listing" agreement provides that the seller will only sell through the broker with whom the listing agreement is signed. This arrangement does not allow the contracting seller to arrange a sale on his own or through any other broker or agent and avoid paying commission to his agent or broker. Second, there is the "general listing" agreement which allows the seller, in good faith, to consummate sales without use of the agent or broker with whom he is "listed."

The final form of listing agreement is the "multiple listing" agreement. This arrangement allows the use of many different agents and brokers in the sales endeavor. The agent who "lists" the property is entitled to a specified portion of the commission generated by any sale. Any agent or broker who arranges the actual sale is also entitled to a set portion of the commission from the sale. Under this last form of listing, the brokers and agents participate in a multiple listing service which publishes on a regular basis a multiple listing book. Properties listed under a multiple listing contract are published in the multiple listing book to which the brokers and agents subscribe. Information on each of the properties listed in the book is in a standard form which includes a great amount of very helpful information for the prospective buyer. The multiple listing book is not available to the general public and so the freelancing purchaser is at a disadvantage. The freelancing purchaser, however, should not be discouraged. There are many instances of persons attempting to sell on their own -- a glance at the classified section of the newspaper will reveal a number of such adventuresome sellers, and a drive through the areas where you would like to buy will also yield a list of homes with "for sale by owner" signs.

b. Striking the Bargain.

Once the purchaser has located a home in which he is interested, there remains the process of negotiating with

the seller for the purchase of the home. Although a broker or agent (in some cases one for the seller and one for the buyer, and in other cases one for both) might be involved in having brought the purchaser and the seller together, the contract specifying the terms for the purchase of the home must still be negotiated. The qualities of a good horse trader are invaluable at this point. Part of being a good horse trader is to acquire all of the information and data both about your own needs and about the needs, objectives and desires of the seller. The bargaining process consists of the working up of an offer by the seller. If an agent is involved on either or both sides, assistance (within limits) may be obtained from him in putting together the terms and conditions of your offer. You must consider, in addition to the question of total purchase price, such matters as the amount of the downpayment, the method of financing (including its availability) and the conditions of transfer of ownership and possession - also remembering to make certain what furnishings and fixtures will be included in the home. (Don't assume that the dishwasher will stay, for example.) Do not be afraid to inquire and ask questions. If your agent or the seller does not prove to be a useful or reliable source, nothing prevents your making independent reasonable investigations and inquiries. Parties and sources who cannot legally or ethically supply you with information will inform you.

Once the essential terms of the first attempt at an offer have been settled upon, the purchaser still has the task of putting the offer in writing to be transmitted or presented to the seller. In Utah, the much used and much abused "Earnest Money Agreement and Offer to Purchase" is a standard form used both for the presentation and acceptance of an offer from the proposed purchaser. (See page 173 for a sample form). As can be determined by looking at the standard Earnest Money Form, it is just that, a "standard form." Its usefulness is limited to very standard transactions. Its protections for the offeror and the offeree are minimal. In a straightforward transaction with a set purchase price to be paid partially by a downpayment from the purchaser and the remainder through some form of standard mortgage or trust deed financing, the form as filled out by a competent agent or broker will be sufficient. The purchaser must remember that the Earnest Money is an offer to a contract on the terms (or lack thereof) presented in the Earnest Money.

That means that if the offer is "accepted" (if the seller likes what the terms of the offer are and signs the Earnest Money as approving and accepting), there is a binding obligation on the part of both parties to carry through with the terms of the agreement. In other words, the purchaser must purchase and the seller must sell in accordance with the terms set forth in the accepted Earnest Money.

In the event that the purchaser should fail to go through with the purchase on the conditions specified, there is a breach of contract by the purchaser for which he is liable to the seller for damages. In most instances in this state, the seller will probably do little more than retain the "earnest money" which was presented with the offer. The amount of the earnest money deposit, then, is subject to forfeiture if the purchaser fails to perform - it is, in fact, money to show the earnestness of the purchaser. Both purchasers and sellers should be alerted to the fact that the terms of the offer (earnest money agreement) are not set in concrete. In addition to the potential for forfeiture of the earnest money deposit, the purchaser should be careful to provide conditions on performance which are tied to his ability to obtain financing. It is wise to make the offer on terms which provide that the purchaser's inability to obtain financing on certain terms will excuse performance of the contract without a forfeiture of the earnest money. (Whether or not agreed, purchaser must use good faith efforts to obtain financing).

As a purchaser, you should also be aware that the seller may reject the earnest money offer and provide his own offer, known as a counteroffer. Purchaser is then placed in the shoes of evaluating the terms of the proposed counteroffer and either accepting or rejecting them. This process of offer, rejection and counteroffer can continue for several rounds before an actual agreement is struck -- or, in some instances, not struck.

In every case, both parties should be aware that certain essential details such as price, payment terms, time for performance, description of property, must be covered to insure that there is indeed a binding agreement.

c. The Transaction Structure -- Financing Methods.

The purchaser and seller may have available a variety of methods for structuring the purchase of the property by the purchaser.

(i) The Uniform Real Estate Contract. A very common instrument in the state of Utah for structuring real estate sales is the Uniform Real Estate Contract. This again is a standard form and is subject to much use and abuse. It is, in effect, an installment sale contract for real property. The seller agrees to allow the purchaser to pay the purchase price of the property over time in installments. (The terms of the installment obligation may differ substantially, but the standard form is to provide for a downpayment with regular monthly payments in a set amount. The terms include the payment of interest on the principal amount of the installment obligation.) The Seller agrees, that upon payment in full of the purchase price, with all interest and other charges, the Seller will give a deed (title) to the property. Until such time, the Seller retains title but grants to the purchaser all of the rights of use and possession which the title holder might expect to have. The purchaser, of course, also agrees to assume all of the duties of paying taxes, assessments, and in maintaining the property. The greatest abuse of this instrument is its indiscriminate use in complex and unsuitable situations. Its use must be carefully evaluated both from the purchaser's and the seller's viewpoints. One rather questionable practice is the tiering of Uniform Real Estate Contracts. That is, where one purchaser on a contract then sells to another on contract, who then sells to another on contract and so on. Unraveling rights, equity interests and obligations in such circumstances is very difficult.

(ii) Conventional Instruments -- Mortgage and Trust Deed. The more conventional methods of financing the purchase price of a home, both in this state and in other parts of the country, are

the mortgage and the trust deed. Both of these instruments are agreements by which the purchaser of the property grants an interest in the purchased property as security for payment of the funds loaned to purchase the property. The standard language of both the mortgage forms and trust deed forms used in this state seem to say that the borrower-purchaser is granting and transferring title in his property to the financing institution to secure payment of the loaned purchase price. However, in the state of Utah, the courts have held that these instruments do not actually transfer title, but simply result in the creation of a lien upon the property.

In a mortgage, there are only two parties: the mortgagor (the borrower-purchaser) and the mortgagee (the lender). In a trust deed there are three parties: the trustor (the borrower-purchaser), the beneficiary (the lender) and the trustee (a third party who holds an interest in the property for the benefit of the beneficiary). Only certain persons and entities can serve as trustees. (This includes attorneys admitted to practice in Utah, banks, and title companies.) In connection with both the mortgage and the trust deed, the purchaser signs a promissory note which obligates him to repay the loan of the purchase money. The mortgage or trust deed recite that they are given to secure the purchaser-debtor's performance and payment of the obligations under the promissory note. That simply means that in the mortgage or trust deed, the purchaser-debtor agrees that if he fails to make payments as required (usually monthly installments of principal and interest), the mortgagee or beneficiary may bring about a sale of the purchaser's interest in the property. The proceeds of such a sale would be applied to pay the promissory note obligation. As with the Uniform Real Estate Contract, all of the rights of ownership, including possession, are transferred to or retained by the purchaser.

Recently, because of the continuing rise of mortgage interest rates, there has been activity in developing alternative forms of mortgage and

trust deed financing. Alternative in the sense that a monthly payment amount fixed for the entire term of a thirty-year mortgage has been replaced with such innovations as monthly payments which gradually increase in amount over the terms of the mortgage and payments which in fact are tied to the variations in the interest rates. Some mortgage and trust deed instruments are tied to promissory notes which call for monthly payments for a certain period with a payment of the entire remaining balance (balloon payment) say, in five years, for example. The purpose of such forms of alternative financing is either to provide for a method by which the financing institution can give a lower rate now (both variable rate and balloon payment mortgages accomplish this because the lender does not have to set his mortgage rate now to cover the risk of rising interest rates in the future) or to provide for lower monthly payments now with increases somewhat in line with the increased earning power of the borrower over the years. A balloon payment requirement essentially requires that the borrower refinance at the prevailing interest rate -- unless he is able to come up with the cash from some other source.

In Utah, there has been available another source of relatively less expensive mortgage money. That is, there has been some money available under certain circumstances at lower than market interest rates. The Utah Housing Financing Agency has had low interest funds available for certain income level borrowers. The money which such agencies as this have available is less expensive because pursuant to certain tax legislation, such agencies can issue bonds which will yield tax-free interest income. These funds have been traditionally to facilitate lower and moderate income home purchases.

3. Building Your Own Home.

In some instances, a purchaser may wish to purchase a lot and have a home built to specification. Or, as an alternative, the purchaser may find a lot and convince a building contractor to acquire the lot and build a home thereon and then convey to the purchaser the finished

home. In the latter instance, before signing any Earnest Money or other type of purchase contract, make certain that the lot is free of all liens and other claims (as hereafter explained, a preliminary title report may be obtained) and have judgment search be made with respect to the contractor.

In any case in which the purchaser is purchasing property in a new subdivision, care should be taken to see that all of the necessary "off-site" improvements (curb, gutter, roads, lighting, sewer, gutter, utilities, etc.) are made or that sufficient provision for making them has been made. Cities in this state have been known to deny building and occupancy permits because of the failure of a developer or subdivider to complete a subdivision with all required improvements. If the subdivider or developer is out of money or business, substantial additional expenditures may be needed and the owners of property in the subdivision may, by pure necessity, have to come up with the funds to complete the improvements.

4. Closing the Transaction -- Becoming "Owner".

Leaving aside for the moment the Uniform Real Estate Contract type transaction, in every contract for the purchase and sale of a home, there will come the moment of truth when the buyer and seller will actually perform their obligations, i.e., the buyer will deliver or cause to be delivered the necessary funds (his downpayment and any borrowed funds) and the seller will be required to deliver a deed (title) to the property and possession. The process for "closing" the sale is not complex. It sometimes involves the services of an "escrow" who will hold the various funds and signed deeds for the parties until all required payments and signatures are obtained. For example, the escrow agent may receive from the buyer the funds with instructions to hold them until a signed deed is delivered. When the deed is delivered in satisfactory form, then the escrow agent will be authorized to give the money to the seller and the deed to the buyer.

In Utah, three different kinds of deeds are available for purposes of transferring the seller's title. If the seller gives a "warranty deed", the purchaser receives title along with the "warranties" of the seller that the title is clean, i.e., that there are not conflicting

claims, liens, mortgages or other clouds on the title and that if there are, seller will get rid of them. Under a quit-claim deed, seller gives no warranties at all as to the state of the title. Indeed, the seller may not have any title at all. A quit-claim deed simply gives "whatever the seller's interest is." A Special Warranty Deed is somewhere in between. Seller warrants by that kind of deed that the property is free of claims or encumbrances created by the seller.

Sometimes, the warranties of the seller may not be worth a great deal. If, for example, the seller would be without the financial resources to clear an encumbrance or cloud on the title, his warranty would prove to be cold comfort. Today, real estate transactions in this state are almost always accompanied by requirements that the seller provide "title insurance." As the phrase implies, "title insurance" is the agreement by a company for the payment of a premium, to insure that the state of the title is as represented by the seller. Prior to the closing of the transaction, the title company will provide a "PR" (preliminary title report) which is both a commitment by the insurance company to insure the title and a report of the "defects" or "clouds" on the title which might need to be cleared in order that the seller can convey a clear title. A purchaser should carefully examine the PR and make certain that there is provision for satisfaction and release of any unwanted clouds.

At the closing, the purchaser may expect to be supplied with certain disclosures and statements. These disclosures and statements will include disclosures relative to the loan and the mortgage or trust deed. There will also be a "settlement statement" which will show from where all of the funds are received and where they are applied, including payment of all closing costs, and many miscellaneous expenses, including commissions for the real estate agent, the premium for the title policy, and pro-rating of taxes. (A typical settlement statement is attached on pages 171-172). The purchaser will also sign the Promissory Note, the Trust Deed or Mortgage, and will acknowledge by signature all of the disclosures, and the statements about disposition of funds. Purchaser will also get the deed to the property.

5. Owning, Selling and Losing a Home in Utah.

Once the purchaser has closed the purchase of a home, there are some additional concerns which should be recognized. First, because of the risk of loss which arises from fire, theft, vandalism, etc., and also because of the potential for liability to other persons for injury on or around the homeowner's property, some form of adequate homeowner's insurance covering those risks should be obtained and maintained. For the most part, it is part of the contract obligation set out in the mortgage, trust deed or real estate contract that the homeowner maintain such coverage. Second, there is the property tax obligation. Each year, the county assessor assesses both real and personal property. Such property is assessed at thirty percent of its reasonable fair cash value and then the tax rate is applied to that amount. Under Utah law, the duty to establish that an assessment is unfair rests upon the taxpayer. Payment of taxes is to be made on the 30th day of November each year. Because the failure to pay premiums on homeowner's insurance or failure to pay property taxes when due could result in risk of loss of the security of the property which lender relies upon, it has been the practice in the past to require that borrowers pay, along with their monthly installments of principal and interest, some amount which, when cumulated over the proper periods, would cover payment of property taxes and insurance premiums. These "reserve" accounts became the subject of consumer oriented legislation by the Utah State Legislature. That legislation required the payment of interest on any mandatory reserve account held by a lender in connection with residential mortgages. If the borrower voluntarily elects to have a reserve account (essentially a forced savings account to cover taxes and insurance premiums), the requirement that the lender pay interest thereon is lifted.

a. Selling the Home.

When the former purchaser is ready to become a seller, a careful review of the options open to the seller for arranging the sale of his home should be made. Essentially a review of the available listing contracts, and perhaps some tailoring of a special such contract, would be of use. Shopping for the right listing agent is helpful, also. In addition to those general considerations, there has been recent legislation in this

state to the rights of homeowners to sell their interests in the home while leaving the first mortgage intact. Prior to the enactment of legislation in 1981 relating to the assumption of mortgages and trust deeds, there was significant litigation throughout the country over the enforceability of "due on sale" clauses in mortgages and trust deeds. These provisions in the trust deed and mortgage contracts simply provided that the lender had the option of accelerating payment of the underlying installment loan if the borrower should sell or agree to sell his property. Without such clauses, it would be possible for the borrower to locate buyer, have the buyer pay out the seller's equity and assume the seller's obligations on the original note and mortgage. The practical effect of such an arrangement is to preserve for the subsequent buyer a much earlier negotiated interest rate. The Utah statute invalidates the due on sale clauses in trust deeds and mortgages on owner-occupied residential real property of up to four units.

As it stands, however, the statute eliminates the right of a lender to accelerate payment of a loan for the reason that the borrower is selling the property, as long as the borrower complies with certain notice requirements relating to any assumption by the new buyer of the original loan obligation. If such notice is given, the lender cannot refuse to allow the assumption unless there is a material adverse effect upon the likelihood of payment or if the assuming party refuses to accept the imposition of a minimal assumption fee and refuses to accept the payment of a minimal upward adjustment of the interest rate. In those cases, or if the notice is not given, the right to accelerate will be exercisable.

b. Failing to Pay (the mortgage or other debts).

What occurs if the borrower fails to make the monthly payments required under the Uniform Real Estate Contract, Mortgage or Trust Deed, as the case may be? The answers differ depending upon which instrument has been used.

(i) Uniform Real Estate Contract. A seller (lender) under a Uniform Real Estate Contract has traditionally (by certain contractual provisions which have been standard) had three alternative remedies or rights to assert if the purchaser should fail to make the required installment

payments. First, the contracts purport to grant a right of "forfeiture." Theoretically that is supposed to mean that the seller can simply declare that the purchaser has forfeited any claim to the home. Practically, there has been much litigation over the use of that right. It is not "self-executing." That is, although the seller may declare a forfeiture, that does not remove the purchaser's claim to some interest in the property, nor does it result in his moving out. Usually, then, the seller has had to institute some judicial action. There have been pitfalls in that area and forfeiture is not a favorite remedy.

(ii) Mortgage. A mortgage is a well-established instrument which provides for the acceleration of the installment debt and for bringing a lawsuit to foreclose the interest of the purchaser in the property. Essentially, the lender files a lawsuit naming the purchaser debtor as defendant, and also naming any other parties claiming an interest in the property derived from the purchaser. The lender asks the court to enter judgment that the debt is delinquent, that the amount is owing, that all of the interests of the defendants be foreclosed and quieted, that the property be sold at public auction and that the money received at the sale be applied against the expenses of the sale and then against the debt owing to the lender. The actual sale is conducted by the sheriff's office, and a purchaser at the sale receives a certificate from the sheriff which indicates that after six months he can obtain a sheriff's deed. The six-month period is to allow the debtor-purchaser or any other of the defendants to "redeem." That is, by paying the amount bid at the sale plus 6% to the purchaser at the sale, the purchaser debtor can get the property back.

(iii) Trust Deed. The Trust Deed provides for two possible methods of foreclosure. The beneficiary (lender) may direct the trustee to foreclose the trust deed like a mortgage. In that case the six-month redemption period is available. Also, any time before the entry of the court's judgment decreeing a foreclosure sale, the

purchaser-debtor can "reinstate." That means that he can pay all of the past due installments, any costs, expenses and attorneys' fees of the lender and have the loan continue as if there had never been any default.

Alternatively, the statutes of this state provide for a right of sale without use of the court. To exercise that right, the trustee must give and record a notice of default (a simple statement which tells what default has occurred) and a notice of sale. The trustee must record the notice of default and send a copy to the purchaser-debtor (and any other parties who record a request for notice). For three months after the notice of default is recorded, there is a right to "reinstate" just like the one described above. After the three months pass, then the Notice of Sale is recorded, sent, and published in the newspaper for a certain period of time and posted on the property and in other places. Until the date of the actual sale, the purchaser-debtor can come in and pay off the loan with all of the costs and expenses and save his home. Once the sale has taken place, the purchaser-debtor has no right in the property -- he is "foreclosed."

(iv) The Judgment Lien. It is entirely possible for a home purchaser to have his property foreclosed in connection with a debt which is not at all related to his mortgage or trust deed on the property. For example, if the purchaser has a Visa Card which he uses to run up a bill of \$300.00 which he fails to pay and is sued for, if the bank obtains a judgment, the judgment is, by law, a lien upon his home. That lien may be foreclosed by use of an execution sale. The six-month redemption right applies to such an execution sale. Under Utah law, the sale of the property may be prevented if the purchaser files a homestead election at any time before the sale.

APPENDIX

Organizations to Know--Chapter Six

Housing Division
Utah Department of Community & Economic Development
231 East 4th South
Salt Lake City, Utah 84111

Apartment Association of Utah
1935 South Main, Suite 546
Salt Lake City, Utah 84115
(This group of apartment owners has handbook of laws for apartment owners, forms for evictions, etc. It is a good organization for owners to know.)

Check with your own local charitable agencies and churches. These groups often are involved with housing in some way.

Help in Repairing, Rehabilitating or Maintaining Housing

Community Services Council
Chore Service (for over 60)
1864 So. State #215
Salt Lake City, Utah 84115
phone: 486-2136

Neighborhood Housing Service
(Serves: 7th East to 11th East and 9th South to 13th South and I-80 to 9th South and I-15 to Redwood Road in Salt Lake City.)
868 East 900 South
Salt Lake City, Utah 84102
phone: 355-7284

Redevelopment Agency of Salt Lake
351 South State
Salt Lake City, Utah 84111
phone: 328-3211

Ogden Redevelopment Agency
252 25th
Ogden, Utah
phone: 399-8241

Assist, Inc. (Emergency Home Repair)
218 East 500 South
Salt Lake City, Utah 84111
phone: 355-7085

Contact your local County Commission or your local Housing Authority for housing rehabilitation assistance if you have a low income.

Organizations You Can Call When You Need Help or Information

Crossroads Urban Center
347 South 400 East
Salt Lake City, Utah 84111
phone: 364-7765

Community Action Programs (CAP):
Salt Lake CAP
764 South 200 West
Salt Lake City, Utah 84101
phone: 359-2444

Bear River Community Action Program
170 North Main
Logan, Utah 84321
phone: 752-7721

Davis County CAP
County Court House #223
Farmington, Utah 84025
phone: 295-2394

South Eastern Utah CAP
109 South Carbon Avenue
Price, Utah 84501
phone: 637-3491

Ogden Area CAP
2411 Kiesel Avenue, Suite 312
Ogden, Utah 84401
phone: 399-9281

Mountainlands CAP
160 E. Center
Provo, Utah 84601
phone: 373-5510

Utah Issues Information
1719 South 1100 East
Salt Lake City, Utah 84105
phone: 484-8581

Utah State Coalition of Senior Citizens
306 East 1st South
Salt Lake City, Utah 84111
phone: 359-9705

Help in Planning & Providing Housing Rehabilitation

Assist, Inc.
218 East 500 South
Salt Lake City, Utah 84111
phone: 355-7085

Community Action Programs,
Weatherization Programs (for
low income people)

Help in Finding Low-Income Housing

Housing Outreach Rental Program (HORP)
2363 South Main Street
Salt Lake City, Utah 84115
phone: 486-9388

Housing Authorities

(Provide rent subsidies and/or help with housing problems
for low income people)

Beaver Housing Authority
Beaver Valley Hospital
Beaver, Utah 84713
phone: 438-2416

Davis County Housing Authority
225 South 200 West
Farmington, Utah 84025
phone: 298-2679

Ogden Housing Authority
2650 Washington Boulevard
Suite 103
Ogden, Utah 84401
phone: 399-8307

Provo City Housing Authority
650 West 100 North
Provo, Utah 84601
phone: 364-1331

Utah Paiute Housing Authority
P.O. Box 40
Kanosh, Utah 84637
phone: 759-2660

Uintah-Ouray Indian Housing Authority
Box 250
Fort Duchesne, Utah 84206
phone: 722-4656

Salt Lake County Housing Authority
1962 South 2nd East
Salt Lake City, Utah 84115
phone: 487-8451

Salt Lake City Housing Authority
1800 South West Temple
Salt Lake City, Utah 84115
phone: 535-6142

Utah County Housing Authority
160 East Center
Provo, Utah 84601
phone: 373-5510

Carbon and Emery County
Housing Authority
322 North 1200 East
Price, Utah 84501
phone: 637-5170

Grand County Housing Authority
County Clerk, County Courthouse
Moab, Utah 84532
phone: 259-5645

Tooele City Housing Authority
185 North Main #201
Box 939
Tooele, Utah 84074
phone: 882-7110 and 882-7111

Millard County Housing Authority
Box 234
Fillmore, Utah 84631
phone: 743-6975 and 743-5400

Summit County Housing Authority
Coalville, Utah 84017
phone: 336-2098

Box Elder County Housing Authority
Box Elder County Courthouse
Brigham City, Utah 84302

San Juan County Housing Authority
P.O. Box 696
Blanding, Utah 84511

Information Regarding Building and Health Code Violations

Housing Division
Department of Building and Housing Services
Room 412, City-County Building
Salt Lake City, Utah 84111
phone: 533-6000
or call your local health department

Emergency Housing

Contact your local Community Action Program or your County
Information and Referral Agency

Legal References

Utah State Bar Referral Service
425 East 100 South
Salt Lake City, Utah
phone: 531-9075

The Lawyer Referral Service will give you the names of two lawyers in your area who will consult with you for one-half hour for a fee of \$10.

Landlord/Tenant Mediation Service

Utah Legal Services

352 South Denver Street

Salt Lake City, Utah 84111

phone: 328-8891

Provides services to low income landlords and tenants of Salt Lake County.)

Utah Legal Services Offices

CEDAR CITY

(Serves Southwestern Utah)

92 West 200 South 84720

phone: 586-2571

Toll free: 1-800-662-1772

OGDEN

(Serves Weber, Cache, Box Elder, North half Davis Counties)

385-24th Street #522 84401

phone: 394-9431

Brigham City phone: 723-2049

Logan phone: 753-3721

Toll free: 1-800-662-2538

1-800-662-2539

PROVO

(Serves Utah, Juab, Wasatch & Southeastern Utah)

105 South 1st East 84601

phone: 374-6766

Toll free: 1-800-662-1563

SALT LAKE CITY

(Serves Salt Lake, Tooele, Summit & South half Davis Counties)

352 Denver Street 84111

phone: 328-8891

Toll free: 1-800-662-4245

SOUTHEASTERN UTAH

Toll Free: 1-800-662-1563

SENIOR CITIZENS

Contact your local legal services office,
or, Toll free: 1-800-662-4245

MIGRANT FARMWORKERS

Contact the Ogden or Salt Lake City Office

UNIFORM REAL ESTATE CONTRACT

1. THIS AGREEMENT, made in duplicate this _____ day of _____, A. D., 19____,
by and between _____
hereinafter designated as the Seller, and _____
hereinafter designated as the Buyer, of _____

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer, and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in the county of _____, State of Utah, to-wit: _____
More particularly described as follows: _____

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of _____ Dollars (\$_____) payable at the office of Seller, his assigns or order _____ strictly within the following times, to-wit: _____ (\$_____) cash, the receipt of which is hereby acknowledged, and the balance of \$_____ shall be paid as follows:

Possession of said premises shall be delivered to buyer on the _____ day of _____, 19____.

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the principal. Interest shall be charged from _____ on all unpaid portions of the purchase price at the rate of _____ per cent (_____) per annum. The Buyer, at his option anytime, may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future installments at the election of the Buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture hereinafter stipulated, or as to any other remedy of the seller.

6. It is understood that there presently exists an obligation against said property in favor of _____ with an unpaid balance of \$_____, as of _____.

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said premises now in the process of being installed, or which have been completed and not paid for, outstanding against said property, except the following _____.

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the then unpaid contract balance hereunder, bearing interest at the rate of not to exceed _____ percent (_____) per annum and payable in regular monthly installments; provided that the aggregate monthly installment payments required to be made by Seller on said loans shall not be greater than each installment payment required to be made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obligations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in obtaining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees that there are no assessments against said premises except the following: _____

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

12. The Buyer agrees to pay the general taxes after _____

13. The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$ _____ and to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him.

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of % of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within _____ days thereafter, the Seller, at his option shall have the following alternative remedies:

- A. Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal process as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller; or
- B. The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorney's fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or
- C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto _____

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, co-trustees, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written.

Signed in the presence of _____

Seller

Buyer

Uniform Real Estate Contract

To

OMB-1 REV. 2/79

FORM APPROVED
GHS NO. 63-R-1991

A. U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN 1. ☐ FHA 2. ☐ FmHA 3. ☐ CONV. URINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: _____ 7. LOAN NUMBER: _____ 8. MORTGAGE INSURANCE CASE NUMBER: _____	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME OF BORROWER: 		E. NAME OF SELLER: 	
G. PROPERTY LOCATION: 		F. NAME OF LENDER: 	
H. SETTLEMENT AGENT: 		I. SETTLEMENT DATE: 	
PLACE OF SETTLEMENT: 			
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER		520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220) ()		602. Less reductions in amount due seller (line 520) ()	
303. CASH ☐ FROM ☐ TO BORROWER		603. CASH ☐ TO ☐ FROM SELLER	

L SETTLEMENT CHARGES				
700. TOTAL SALES/BROKER'S COMMISSION based on price \$ \$ -				
Division of Commission (line 700) as follows:				
701. \$	to			PAID FROM BORROWER'S FUNDS AT SETTLEMENT
702. \$	to			
703. Commission paid at Settlement				
704.				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee	%			
802. Loan Discount	%			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee to				
807. Assumption Fee				
808.				
809.				
810.				
811.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest from	to	\$	/day	
902. Mortgage Insurance Premium for	months to			
903. Hazard Insurance Premium for	years to			
904.	years to			
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard insurance	months @ \$	per month		7
1002. Mortgage insurance	months @ \$	per month		
1003. City property taxes	months @ \$	per month		
1004. County property taxes	months @ \$	per month		
1005. Annual assessments	months @ \$	per month		
1006.	months @ \$	per month		
1007.	months @ \$	per month		
1008.	months @ \$	per month		
1100. TITLE CHARGES				
1101. Settlement or closing fee	to			
1102. Abstract or title search	to			
1103. Title examination	to			
1104. Title insurance binder	to			
1105. Document preparation	to			
1106. Notary fees	to			
1107. Attorney's fee	to			
(includes above items numbers;				
1108. Title insurance	to			
(includes above items numbers;				
1109. Lender's coverage	\$			
1110. Owner's coverage	\$			
1111.				
1112.				
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees: Deed \$		Mortgage \$	Releases \$	
1202. City/county tax/stamps: Deed \$		Mortgage \$		
1203. State tax/stamps: Deed \$		Mortgage \$		
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey	to			
1302. Pest inspection	to			
1303.				
1304.				
1305.				
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)				

THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE."

EARNEST MONEY RECEIPT AND OFFER TO PURCHASE

1 TO: _____ City _____ State _____ Zip _____

2 IN CONSIDERATION OF your agreement to use your efforts to present this offer to the Seller, I/we _____

3 hereby deposit with you in escrow money the sum of \$ _____ DOLLARS

4 to the State of _____

5 to secure and apply on the purchase of the property situated at _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 including any of the following items if it is present attached to the property: Plumbing and heating fixtures and equipment including water and oil tanks, water heaters, water pipes, electric light fixtures including bulbs, bathroom fixtures, roller shades, curtain rods and fixtures, window blinds, window and door screens, linoleum, all shrubs and trees, and all other fixtures except _____

13 _____

14 The following personal property shall also be included as part of the property purchased: _____

15 _____

16 _____

17 The said purchase price of \$ _____ DOLLARS

18 shall be payable as follows: \$ _____ which represents the above-mentioned deposit, receipt of which is hereby acknowledged by you;

19 \$ _____ when seller agrees rate, \$ _____ on delivery of deed or final contract of

20 sale which shall be on or before _____ and \$ _____ each month commencing _____

21 _____

22 _____

23 _____

24 _____

25 _____

26 _____

27 _____

28 _____

29 the balance of \$ _____ together with interest is paid, provided, however, that buyer at his option, at any time, may pay amounts in excess of the monthly payments upon the unpaid balance, subject to the limitations of any mortgage or contract by the buyer herein assumed. Interest at _____ % per annum on the unpaid portions of the purchase price to be included in the prescribed payments and shall begin as of date of possession which shall be on or before _____ All risk of loss and destruction of property, and expenses of insurance shall be born by the seller until date of possession at which time property taxes, taxes, insurance, interest and other expenses of the property shall be prorated as of date of possession. All other taxes and all assessments, mortgages, estate taxes and all other taxes, encumbrances or charges against the property of any nature shall be paid by the seller except _____

30 The following special improvements are included in this sale: Sewer ☐ - Connected ☐ - None; Yard and/or Garage ☐ - Attached ☐ - Detached ☐ - None; and Garage ☐ - Attached ☐ - Detached ☐ - None; Special Street Paving ☐ - Special Street Lighting ☐ - Culinary Water (City) ☐ - Other Community System ☐ - Private ☐ (Legend: Yes (x) No ())

31 CONTRACT OF SALE OR INSTRUMENT OF CONVEYANCE TO BE MADE ON THE APPROVED FORM OF THE UTAH SECURITIES COMMISSION IN THE NAME OF _____

32 _____

33 This purchase is conditional and offer is made subject to the written acceptance of the offer contained herein within _____ days from this hereto, and unless so approved the return of the money herein deposited shall remain the offeror's property.

34 In the event the purchaser fails to pay the balance of said purchase price or complete said purchase as herein provided, the amount paid herein is all, at the option of the offeror be returned to him/her and no refund.

35 It is understood and agreed that the terms contained in this receipt constitute the entire Preliminary Contract between the purchaser and the offeror, and that no verbal statement made by anyone relative to this transaction shall be considered to be a part of this transaction unless incorporated in writing herein. It is further agreed that execution of the final contract shall discharge this Earnest Money Receipt and Offer to Purchase.

36 _____ Agent By _____

37 We do hereby agree to carry out and fulfill the terms and conditions specified above, and the offeror agrees to furnish good and marketable title with clear title brought to date or at _____

38 Seller's option a policy of title insurance in the name of the purchaser and to make final arrangements by warranty deed or _____

39 In the event of sale of other than real property, seller will provide evidence of title or right to sell or lease. If either party fails to do so, he agrees to pay all expenses of collecting the proceeds, or of any right arising out of the breach thereof, including a reasonable attorney's fee.

40 The offeror agrees, in consideration of the efforts of the agent in procuring a purchaser, to pay and agree a commission of _____ % of the sale price. In the event the offeror has entered into a listing contract with any other agent and said contract is primarily effective, this paragraph will be of no force or effect.

41 _____ _____ _____ _____

42 _____ _____ _____ _____

43 (These two separate receipts to furnish copies of this contract bearing all signatures to buyer and seller. Depending upon the method used, one of the following forms must be completed.)

44 I acknowledge receipt of a final copy of the foregoing agreement bearing all signatures:

45 _____ _____ _____ _____

46 I personally issued a final copy of the foregoing agreement bearing all signatures to be mailed to the ☐ Seller, ☐ Purchaser, on _____

47 _____, by registered mail and return receipt is attached herein.

48 _____ _____

APPROVED FORM — UTAH SECURITIES COMMISSION

Proper Eviction
Notice
Properly Served

Tenant
does not
move or cure

Tenant
moves out or
cures problem

UTAH
EVICTON
PROCESS

Tenant served 3-Day
Summons & Complaint
(Start of a Lawsuit)

Tenant
Answers
Complaint

NO

YES

Default Entered
Order of Restitution Issued
(Gives Possession back to LLD)

(If Tenant doesn't move
Sheriff can move him out.)

Landlord
Files
Possession
Bond

NO

YES

Tenant
Pays
Rent

OR

Tenant
Does
Nothing

OR

Tenant
Files
Counter-
Bond

OR

Tenant
Demands
Hearing

Order of
Restitution
Issued

If matter
not resolved
at Hearing

Trial

Trial

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Chapter Six

HOUSING LAW

"Where You Live" Questions and Answers

1. What laws prohibit housing discrimination in Utah or your community? What state or local agencies enforce these laws and investigate complaints?

Utah. The Utah Civil Rights Act (13-71-1 et seq. U.C.A.) prohibits "the practice of discrimination on the basis of race, color, sex, religion, ancestry or national origin in business establishments or places of public accommodation or in enterprises regulated by the state" A person who feels he has been discriminated against should report it to the Utah Attorney General's office which "shall investigate . . ." A lawsuit might be brought by the state to stop the discrimination or the person who was discriminated against could bring a lawsuit for damages. Anyone who believes he has been unlawfully discriminated against should consult an attorney to be advised of all his rights and options.

Local. The local government (city or county) where a person lives may have passed anti-discrimination ordinances. Call your local government and find out what rights you have under your local laws.

2. Is rent control permitted in Utah? If so, how does it operate and how successful has it been?

Utah has no law permitting rent control.

3. What is Utah's law regarding repairs or warranty of habitability?

Utah has no laws regarding repairs or warranty of habitability. Utah has no law allowing a tenant to make repairs and deduct the cost from his rent. If a tenant does this without permission, he may be evicted for non-payment of rent.

4. Is there a housing code in your community? If so, what does it cover? Who enforces it?

Many of the larger urban areas in Utah have codes passed by their local governments as city or county ordinances. These codes are usually enforced by the agency which does the inspections along with the city or county attorney.

In rural areas there are often no such codes. There usually are county building inspectors who approve new construction. If not, the builder would be legally responsible to the owner for defects or dangerous conditions in the construction.

5. What is the law in your area regarding security deposits? Is there a limit to the amount that can be required? Does the landlord have to pay interest on the security deposit?

The Utah legislature passed a law in 1981 regulating deposits (57-17-1 et seq. U.C.A.). There is no limit on the amount of deposit a landlord may require. The law does not require a landlord to pay interest on the security deposit.

In a nutshell, the law requires a landlord to inform you in writing if any of the deposit is non-refundable. When you move out, the landlord may apply all or a portion of the deposit to the rent owing or damages to the property, but he must state this in writing to you. The landlord must return the full deposit to you, or a portion with deductions itemized, or a statement why the full amount is being retained, within 30 days of your moving out or within 15 days of receiving your new address, whichever is later. If the landlord does not follow these directions, you must sue him in Small Claims Court to get your deposit back.

6. Can tenants sue landlords for injuries or damages to property in Utah? Will courts enforce a waiver of tort liability clause in the lease?

Utah has no law specifically allowing or prohibiting tenants to sue landlords for injuries or damage to property. Usually landlords are

responsible for the maintenance and upkeep of "common areas" on the property. Common areas are those places that all tenants use or have access to, e.g., inside their apartments. Usually a landlord will suggest the tenant obtain renter's insurance. There are a few specific instances where the landlord may be legally liable for defects in the tenant's area.

Utah courts do not like to enforce waiver of tort liability clauses. In order to be enforced, the court must be certain that the tenant knew what he was signing and the legal implications of it. If the waiver clause was one of many small print paragraphs of a lengthy lease which many tenants don't read, it probably would not be enforced. If, however, the waiver clause was printed in large print with an explanation and initialled by the tenant, it probably would be enforced.

7. Is there an agency in your area that handles tenant complaints? Does it enforce a housing code? If so, how effective is it?

There is no particular agency created to handle tenant complaints. In urban areas the health or building departments will investigate complaints about conditions of the dwelling. In other areas tenants may be able to obtain information regarding their rights from the local city or county attorney's office.

In Salt Lake County there is a Landlord/Tenant Mediation Service currently administered by Utah Legal Services, Inc. which serves low income tenants and landlords. Landlords may also get information from the Apartment Owners Association in Salt Lake City.

8. Are there any tenant organizations in your community? What do these organizations do? How effective have they been?

There are no tenant organizations in Utah. Several have been organized in the past 10-15 years but none has survived. The tenants of some public housing authorities have organized around their own particular concerns. Mobile home owners have

organized an effective group, the Mobile Home Owners Cooperative Foundation, to deal with mobile home park owners.

9. Does the law in your community allow a tenant to withhold rent?

No Utah law allows a tenant to withhold rent. If a tenant does so, he risks being evicted for nonpayment of rent.

10. Is there a landlord-tenant court in your community? If so, where is it located, and what procedures does it follow? Is there a legal aid or legal services office in your area that represents tenants?

There is no housing or landlord-tenant division of Utah courts. Most rental matters are handled in the Small Claims or Circuit Courts.

Salt Lake County is served by both the Legal Aid Society of Salt Lake and Utah Legal Services, Inc. Both do civil law for low income people. Utah Legal Services currently has offices in Provo, Ogden and Cedar City besides Salt Lake City. (Note: Utah Legal Services may be defunded due to federal cut-backs.)

11. What is the law in Utah regarding retaliatory evictions?

Utah law does not address the issue of retaliatory evictions. The Utah Supreme Court has intimated that it might recognize the doctrine prohibiting retaliatory evictions in an appropriate case, but it is dangerous to try to predict how a court will rule.

12. What federal, state, or local housing agencies exist in your area? Do they have mortgage loan or housing rehabilitation programs? How do they operate?

Many local governments have created public housing authorities which help to provide affordable housing for low income people. Local governments may also create redevelopment agencies which can aid home owners in rehabilitating their homes. The Utah Housing Finance Agency has helped many people buy

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homes by lending them money at lower than market rates. However, due to some federal legislation, this agency is no longer able to raise money by selling bonds and is currently only servicing its outstanding loans.

Low interest mortgage money formerly available through various HUD departments has been cut drastically due to federal cuts. Other agencies will guarantee conventional loans for qualified applicants; i.e., if the buyer defaults, the agency will pay off the financial institution which loaned the money.

ASSIST is a locally funded agency in Salt Lake County which has limited funds available for emergency housing repairs for low income people.

13. How has the restoration and historic preservation movement affected your community? In what ways has it helped? Has it caused any problems?

The federal program which gave grants for historical preservation has been terminated. Salt Lake City, in conjunction with the Utah Heritage Foundation, has a program which gives low interest loans (not grants) to eligible homeowners.

Such programs do help preserve housing, but they can have the unfortunate side effects described on page 267 of the text. A good example of this process locally is the lower avenues area of Salt Lake City.

CHAPTER SEVEN

INDIVIDUAL RIGHTS AND LIBERTIES*

Problems arising in Utah over the past several years have led to many important decisions relating to individual rights and liberties guaranteed under the United States Constitution and federal statutes. Further, the Utah Constitution and state laws guarantee civil rights and liberties which, in many instances, are similar to federal law. States are free to broaden the guarantees provided to their citizens under the U.S. Constitution; however, the states cannot limit federally protected rights.

This chapter of the Utah Supplement to Street Law deals with issues relating to individual rights and liberties in Utah under both federal and state laws. The first section of this chapter focuses upon cases arising in Utah which have been decided according to the federal laws and constitutional principles discussed in the main text. The second section discusses examples of individual rights and liberties guaranteed under Utah law.

A. UTAH ISSUES DECIDED UNDER FEDERAL LAWS

In recent years, there have been numerous landmark decisions relating to controversies in Utah over the availability of abortion, problems of Church and State and freedom of speech. Several of those decisions are discussed below.

1. Freedom of Speech

Although the First Amendment of the U.S. Constitution restricts only the United States Congress (Federal Government), the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution¹ takes

* This chapter was written by Ross Anderson of the law firm of Rooker, Kimball, Larson & Parr.

1 The Due Process Clause provides as follows:

" . . . nor shall any State deprive any person of life, liberty or property, without due process of Law . . . "

away from State interference all First Amendment rights--freedoms of speech,² press,² religion,³ assembly,⁴ association,⁵ and petition for redress of grievances.

Although the United States Constitution is the supreme law of the land and the United States Supreme Court--which has applied the First Amendment to the states (required the states to follow their rulings) through the Fourteenth Amendment--is the final authority in interpreting what the Federal Constitution means, the Utah Supreme Court has, on

2 "[F]reedom of speech and of the press--which are protected by the First Amendment from abridgment by Congress-- are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." Gitlow v. People of the State of New York, 268 U.S. 652, 666 (1925).

3 "The fundamental concept of liberty embodied in [the fourteenth] Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the Legislatures of the States as incompetent as Congress to enact such laws." Cantwell v. State of Connecticut, 310 U.S. 296, 303 (1940).

4 "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental . . . [T]he right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions-- principles which the Fourteenth Amendment embodies in the general terms of its Due Process Clause." DeJonge v. State of Oregon, 299 U.S. 353, 364 (1937).

5 "[F]reedom of association is included in the bundle of First Amendment rights made applicable to the States by the Due Process Clause of the Fourteenth Amendment." Louisiana v. National Ass'n. for Adv. of Col. People, 366 U.S. 293, 296 (1961).

occasion, expressed the opinion that the Fourteenth Amendment of the U.S. Constitution does not impose any restrictions relating to freedom of speech upon the states. For instance, the Utah Supreme Court has refused to consider federal law in pornography suits, stating that the U.S. Supreme Court's application of the Bill of Rights to the states through the Fourteenth Amendment is inconsistent with the balance of power between the states and the federal government which was intended by our founding fathers, State v. Phillips, 540 P.2d 936, 938-39 (Utah 1975) and the State judges should not apply in Utah the doctrine relating to freedom of speech enunciated by the United States Supreme Court. Salt Lake City v. Piepenburg, 571 P.2d 1299, 1299-1300 (Utah 1977).

Notwithstanding that peculiar approach by the Utah Supreme Court, several cases involving freedom of speech issues in Utah have been decided under federal law.

a. Obscenity.

In 1978, the Utah Supreme Court considered the federal constitutional claims of several persons convicted under a Utah criminal statute prohibiting the distribution of pornographic material. The Utah Supreme Court reviewed the standards of censorship of obscenity set by the United States Supreme Court in Miller v. California, 413 U.S. 15 (1973)⁶ and stated that the requirements of the United States Constitution are met if the statute (a) states that the article must appeal to prurient interests in sex; (b) specifically defines the prohibited conduct; and (c) states that in order for the matter to be pornographic, it must have "no serious literary, artistic, political or scientific value." State v. Haig, 578 P.2d 837, 839-40 (Utah 1978).

One should keep in mind that under the standard set by the United States Supreme Court, to prohibit an expression on the ground that it is obscene, there must be a finding that the average person, applying the standards of the community, feels that the work as a whole appeals to a prurient (lewd) interest in sex.

⁶ Standards are discussed on pp. 275-76 of Street Law, 2nd Edition.

b. Defamation.

As noted in the main text, there is no constitutional right to falsely speak ill of another to his or her detriment. However, there is no legal claim against a person expressing a true belief or opinion--whether or not the facts prove the belief or opinion to be accurate.

In 1967, an Ogden Bus Lines bus was involved in a serious accident. KSL, Inc. published an editorial, stating that "KSL believes the conclusion is warranted that the operator of the vehicle . . . was lax." The Utah Supreme Court held that KSL was protected from a suit for defamation. The Court adopted the following rule:

The right of comment is not restricted to a restatement of the naked facts. As a general rule it may include the right to draw inferences or express opinions from facts established. The soundness of the inferences or opinions is immaterial whether they are right or wrong, provided they are made in good faith and based upon the truth . . .

Ogden Bus Lines v. KSL, Inc., 551 P.2d 222, 225 (Utah 1976).

The Court also stated that if a publication deals with matters of public interest, the publisher is immune from liability for defamation unless (a) the publisher knew that the statement was false or (b) the statement was made with reckless disregard of whether it was false.

During the 1976 campaign for the election of a United States Senator from Utah, the incumbent, Frank E. Moss, discussed during a press conference the financing of the campaign of his opponent, Orrin G. Hatch. During that discussion, Senator Moss made the following statement:

"Mr. Hatch, in a joint appearance that we had, admitted that Andy Lawrence had been here as a consultant. Well, I know about Andy Lawrence. He was the bag man for Spiro Agnew."

Mr. Lawrence sued Mr. Moss for slander and Mr. Moss argued that because Mr. Lawrence was a public figure,

"actual malice" (evil intent) must be proven to recover for defamation.⁷ The United States Court of Appeals for the Tenth Circuit acknowledged that if Mr. Lawrence was a public figure, he would have to prove actual malice on the part of Mr. Moss to prevail in the lawsuit. However, the Court held that Mr. Lawrence was not a public figure. Therefore, if Mr. Moss made the statement with an improper intent to do harm, or with knowledge that the statement was false, or with reckless disregard of whether it was true, he may be liable to Mr. Lawrence. Lawrence v. Moss, 639 F.2d 634, 638 (10th Cir. 1981). Mr. Lawrence could sue.

c. Public Disturbances.

An organization known as "Truth About Civil Turmoil Committee" sponsored a speech held on the campus of Utah State University. After the speech, members of the audience began shouting and swearing at the speaker, requiring a premature adjournment of the meeting. Some of the persons disturbing the meeting were arrested and charged with violation of a statute prohibiting the willful disturbance or breaking up of any lawful assembly or meeting.

Holding that the statute is not inconsistent with the First Amendment, the Utah Supreme Court pointed out that if freedom of speech allowed one to disturb and break up public gatherings, such a right would necessarily conflict with the rights of others to freely speak, associate and assemble. State v. China, 463 P.2d 802, 805-06 (Utah 1970).

2. Freedom of Religion

Organized religious and fraternal groups have been the focus of various lawsuits in Utah involving both the prohibition against the establishment of religion by the State or federal government and the infringement by the State or federal government on the free exercise of religion. Four of the most interesting cases are discussed below.

⁷ See discussion on p. 276 in Street Law, 2nd edition of special rules where public figures are involved.

a. Establishment of Religion

Logan High School allowed students to be released from school one hour per day to receive religious instruction at a seminary program sponsored by the Church of Jesus Christ of Latter-Day Saints ("L.D.S. Church"). Two units of credit for graduation from the Old Testament and New Testament courses at the seminary were granted towards graduation from Logan High School.

When the seminary program was challenged as being violative of the Establishment Clause (discussed on pp. 288-89 of Street Law, 2nd Edition), the United States District Court for the District of Utah held (1) that simply releasing students for religious instruction does not violate the constitutional ban against the governmental establishment of religion and (2) that the granting of public high school credit for courses concerned primarily with the advocacy of the religious beliefs and practices of the L.D.S. Church constituted an impermissible involvement in religion by the State. The Court reasoned as follows:

The Establishment Clause prohibits sponsorship, financial support or active involvement by the sovereign (here the school district) in religious activity. The state is required to maintain an attitude of neutrality toward religion.

Our courts having mandated bounds of absolute neutrality in matters of religion for the public school, no plausible secular purpose can be served by accreditation of classes that are both religious and sectarian in nature.

Lanner v. Wimmer, 463 F. Supp. 867, 881 (D. Utah 1978).

On the north side of the Third District Court Building in Salt Lake City stands a 3 x 5 foot granite monolith inscribed with a version of the Ten Commandments. The monolith was erected by the Fraternal Order of Eagles, after permission was granted by the Boards of Commissioners of Salt Lake City and Salt Lake County. The city commissioners also authorized the installation and maintenance of lighting equipment to illuminate the display, at City and County expense.

Suit was brought by residents of Salt Lake County, seeking removal of the monolith on grounds that the erection and maintenance of the display violated the Establishment Clause of the First Amendment. The United States Court of Appeals for the Tenth Circuit recognized that the Constitution requires government neutrality in religious matters, but determined that the monolith is primarily secular, and not religious in character and that neither its purpose nor effect tends to establish religious belief. Holding that the erection and maintenance of the display is not unconstitutional, the court noted as follows:

[W]e must strike a balance between that which is primarily religious and that which is primarily secular, albeit embodying some religious impact. A tempered approach obviates the absurdity of striking down insubstantial and widely accepted references to the deity in circumstances such as courtroom ceremony, oaths of public office, and on national currency and coin. Anderson v. Salt Lake City Corporation, 475 F.2d 29, 32 (10th Cir. 1973), cert. denied 414 U.S. 879 (1973).

b. Free Exercise of Religion

The federal and state governments may not promote religion; neither may they interfere with the free exercise of religion. However, the freedom to exercise religion, like other constitutional rights, is not absolute.

In an early landmark decision, the United States Supreme Court upheld the polygamy conviction of a Mormon, despite the fact that an accepted doctrine of his religion then imposed upon its male members the duty to practice polygamy. Distinguishing between the freedom to act and the freedom to believe, the Court stated its reasoning as follows:

Laws are made for government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the Civil government under which he lived could not interfere to prevent a sacrifice?

Reynolds v. United States, 98 U.S. 145 (1878)

A counterfeiter of Federal Reserve notes was convicted of violation of federal criminal statutes. He argued that because he held religious beliefs against a welfare state, which resulted from the currency system, the laws under which he was convicted unconstitutionally interfered with his free exercise of religion. The United States Court of Appeals for the Tenth Circuit stated that conduct--even if religiously motivated--is subject to regulation for the protection of society. The Court held that the counterfeiter's religious belief in the invalidity of the federal currency laws did not allow him to act contrary to the federal counterfeiting laws. United States v. Grismore, 564 F.2d 929 (10th Cir. 1977) cert. denied 435 U.S. 954 (1978).

3. Right to Privacy

a. Dress and Grooming Standards

On page 295 in Street Law, 2nd Edition, Problem 16 addresses the question of the validity of dress and grooming standards at work and at school. This very issue has come to attention of the Courts. Two Salt Lake City employees were discharged because of noncompliance with a work regulation prohibiting hair worn over the ears or collars. The United States District Court for the District of Utah held that the right to wear hair at any length is not a constitutional right, regardless of whether a school regulation or work regulation is involved. Farmer v. Catmull, 339 F. Supp. 70 (D. Utah 1972). The court appeared to think that the matter was a trivial one, which did not "directly and sharply implicate basic constitutional values." [For a similar holding with respect to Utah school regulations on the length of hair, see Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971) cert. denied 405 U.S. 1032 (1972).]

Throughout the United States, at least four circuits have upheld school hair regulations⁸ and four circuits

⁸ Freeman v. Flake, *supra*; King v. Saddlebrook Jr. College, 445 F.2d 932 (9th Cir. 1971); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970); Ferrel v. Dallas Ind. School District, 392 F.2d 697 (5th Cir. 1968).

have struck them down as unconstitutional.⁹ That is to say the courts throughout America are divided on this issue.

B. INDIVIDUAL RIGHTS AND LIBERTIES UNDER UTAH LAW

The states may not alter federal constitutional law, but they are free to provide greater protections for their citizens than required by the United States Constitution as interpreted by the United States Supreme Court. In terms of individual liberties, the greatest importance of state constitutions and state legislation lies in the greater protections offered by them as compared to the protections of the United States Constitution and federal legislation. The protections of individual rights and liberties under Utah law, as compared to those under federal law, will be examined in this section.

Many of the provisions under the Utah Constitution and Utah Code provide protections similar or supplemental to those found under federal law. A few examples of those Utah laws are discussed below.

1. Freedom of Speech, Assembly and Religion

Article I, Section 1, of the Utah Constitution provides as follows:

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

⁹ Massie v. Henry, 455 F.2d 779 (4th Cir. 1972); Bishop v. Cole, 450 F.2d 1069 (8th Cir. 1971); Richards v. Thurston, 424 F.2d 1281 (1st Cir. 1970); Breen v. Kahl, 419 F.2d 1034 (7th Cir. 1969).

a. Freedom of Speech

As under the Federal Constitution, freedom of speech under the Utah Constitution is not absolute. The right of free speech is subject to reasonable regulation by the state when it collides with more paramount public interests. Thus, the Utah Supreme Court has held that peaceful picketing is an exercise of constitutionally guaranteed free speech but that the state may prohibit picketing under violent circumstances. Sutton v. Marvidikis, 310 P.2d 735 (Utah 1957).

(1) Defamation.

Utah law provides that one is guilty of a class B misdemeanor if he "knowingly communicates to any person orally or in writing any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule." §76-9-404, Utah Code Annotated, 1953, as amended.

b. Freedom of Religion.

Although Article I, Section 1 of the Utah Constitution recognizes the right to worship according to the dictates of one's conscience and Article I, Section 4 provides that the State shall not make any law prohibiting the free exercise of religion, Article III provides that "polygamous or plural marriages are forever prohibited."

It is unlikely that one may justify actions contrary to law by arguing that such actions are merely an exercise of religion or of the right to worship freely as guaranteed by the Utah Constitution. (See discussion of free exercise of religion under the Federal Constitution, on pages 189-190.)

2. Due Process

Inasmuch as Article I, Section 7 of the Utah Constitution is substantially similar to the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, the Utah Supreme Court has stated that the decisions of the United States Supreme Court relating to those amendments are highly persuasive as to the interpretation of Article I, Section 7 of the

Utah Constitution by the Utah Supreme Court. Untermyer v. State Tax Comm., 129 P.2d 881 (Utah 1942). Thus, it is unlikely that in interpreting the Due Process Clause of the Utah Constitution, the Utah Supreme Court will construe due process rights more broadly than the United States Supreme Court has done in interpreting the Federal Constitution.

3. Right to Privacy

a. Lie Detector Tests.

Many people believe that it is an unwarranted invasion of privacy for an employer to require one's consent to submit to a polygraph test upon demand. Many employers argue that such consent requirements deter employees from stealing and provide an efficient means of determining the identity of guilty employees. Many employees argue that polygraph tests are inaccurate and often administered by incompetent polygraphers. They also argue that the use of the tests often results in the invasion of sensitive aspects of one's life, having nothing to do with job performance.

The Utah Legislature has examined the problem, but has responded to it only by enacting licensing laws, intended to assure the competence of polygraphers and operators of other truth detection devices (e.g. voice stress tests). Section 34-37-1, et seq. Utah Code Annotated, 1953, as amended.

b. Criminal Laws Protecting Privacy.

Under Utah statute, one is guilty of a class B misdemeanor if one trespasses on property to eavesdrop or subject another person to surveillance in a place where one may reasonably expect to be safe from intrusion or surveillance. Also, the installation or use of any device to observe, photograph, record, amplify or broadcast sounds or events occurring in a private place is a crime in Utah. §76-9-402, Utah Code Annotated, 1953, as amended.

4. Discrimination.

a. Sexual Equality Provision in the Utah Constitution.

While there has been tremendous controversy over the proposed Federal Equal Rights Amendment,¹⁰ the Utah Constitution contains a provision which seems to provide even greater guarantees of equality among the sexes.

Article IV, Section 1 states in part as follows:

Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

Notwithstanding the arguments that the Equal Rights Amendment will cause drastic changes throughout our society, Article IV, Section 1 of the Utah Constitution seems to have gone almost unnoticed. Since the adoption of the Utah Constitution in 1895, there have been only a few, rather insignificant cases requiring an interpretation or application of Article IV, Section 1.

b. Utah Antidiscrimination Act. The Utah Antidiscrimination Act, §34-35-1 et seq. Utah Code Annotated 1953, as amended, provides in part as follows:

It shall be a discriminatory or unfair employment practice . . . for any employer . . . to discriminate in matters of compensation against any person otherwise qualified, because of . . . sex . . .

§34-35-6, Utah Code Annotated 1953, as amended.

¹⁰ The proposed Equal Rights Amendment reads as follows:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this Article.

Section 3. This Amendment shall take effect two years after the date of ratification.

That statute is similar to the Federal Equal Pay Act of 1963, 29 U.S.C. §206(d)(1).

Although one may not discriminate in compensating employees solely on account of sex, the state law is not necessarily violated where a woman is doing the same work as a man, with the same degree of competence, but is paid less. In Kopp v. Salt Lake City, 506 P.2d 809 (Utah 1973), the Utah Supreme Court stated that if factors other than sex--such as seniority and classification--enter into the compensation determinations, there is no violation of the law.

c. Sex Discrimination and Equal Protection.

An important Utah case involving sex discrimination was Stanton v. Stanton, 517 P.2d 1010 (Utah 1974), rev'd. 421 U.S. 7 (1975). In that case an eighteen-year-old woman complained that her right to equal protection of the laws was violated by a statute providing that the age of majority for men was twenty-one, but eighteen for women. As a result of that law, the woman was not paid support after she reached eighteen, while her brother was paid until he was twenty-one.

The Utah Supreme Court upheld the statute differentiating between men and women with respect to the age of majority, but the United States Supreme Court reversed, holding that the distinction created by the statute was without sufficient justification and that it was violative of the Equal Protection Clause

APPENDIX

Organizations to Know--Chapter Seven

American Civil Liberties Union (ACLU)
Judge Building
Salt Lake City, Utah 84111
521-9289

Crossroads Urban Center
347 South 400 East
Salt Lake City, Utah 84111
364-7765

Legal Center for the Handicapped
455 East 400 South
Salt Lake City, Utah 84111
363-1347

Mountain West Sex Desegregation Assistance Center
Weber State College
Ogden, Utah 84408
626-6650

NAACP
1058 East 900 South
Salt Lake City, Utah 84105
363-5771

Socio
3060 Lester
West Valley City, Utah 84119
972-1027

State Industrial Commission
350 East 500 South
Salt Lake City, Utah 84111
533-6411

State Office of Education
Title IX and Section 504
Beth Davis, Equal Opportunity Coordinator
250 East 5th South
Salt Lake City, Utah 84111
533-7193

Chapter Seven

INDIVIDUAL RIGHTS AND RESPONSIBILITIES

"Where You Live" Questions and Answers:

1. How do schools in your community notify persons of their privacy rights? What written procedures have been developed to implement this law?

Your school district's central administration can tell you about your district's policy regarding privacy rights. It will probably be in the form of an official policy adopted by the Board of Education in your district.

2. Does Utah or your community have any laws regarding the use of lie detectors? If so, what are they?

Section 34-37-1 et seq. Utah Code Annotated, 1953 as amended, regulates the competence of polygraphers and operators of other truth detection devices, but otherwise does not prohibit their use.

3. What due process procedure is followed by schools in your area before a student is suspended?

This varies from district to district, but every district should have a policy. Ask the central administration of your school district for a copy of the policy. It is probably a formally adopted policy of the Board of Education.

4. What is the racial composition of schools in your area? How has this changed over the last few years? Have there been any court decisions where you live regarding school desegregation?

Though forced bussing has not been used to achieve desegregation in Utah, other techniques such as closing schools with high percentages of minorities have been incorporated into desegregation plans. The majority of Utah's Black, Asian and Hispanic population is concentrated along the urban Wasatch Front. The Superintendent in your district can tell you who

keeps the population figures related to minority populations in your district.

5. To what extent is discrimination based on race, national origin and alienage a problem in your community? What steps are being taken or should be taken to eliminate such discrimination?

This, of course, will vary from community to community. For information on your community, contact agencies that specialize in serving the needs of the poor and minorities, such as the National Association for the Advancement of Colored People (NAACP), Council for Spanish Speaking Organization (CSSO), Japanese-American Citizens League (JACL), Asian Association of Utah (AAU).

6. Has the Equal Rights Amendment been ratified in Utah? Does Utah have its own laws against sex discrimination?

Though the ERA has not been ratified in Utah, this state has its own provisions for prohibiting discrimination on the basis of gender (See page 194).

7. Are there any state or local laws in Utah that extend the protections against discrimination offered by federal laws? What state and local agencies are responsible for enforcing those laws?

The Utah Antidiscrimination Act discussed on pages 194-195 extends federal antidiscrimination laws such as the Federal Equal Pay Act of 1963. The agency responsible for enforcing this law is the Anti-Discrimination Division of The Industrial Commission. Claims on discrimination related to education are handled by the Equal Educational Opportunity Office at the Utah State Office of Education.

APPENDIX

GLOSSARY

Accomplice	One associated with another, especially in wrongdoing.
Acquit	To discharge or set free from the charge of an offense by verdict, sentence, or other legal process.
Action	A suit brought in a court; a formal complaint within the jurisdiction of a court of law.
Adopt	To take into one's family the child of another and give him or her the rights, privileges and duties of a child and heir.
Adultery	Voluntary sexual intercourse between a married person and someone other than his or her spouse.
Agent	A person authorized by another to act for him; one entrusted with another's business.
Alimony	Payments ordered by a court that are made by a person to a divorced spouse for personal support.
Allegation	An accusation that has not been proved. In the context of either juvenile or criminal proceedings, a claim that the subject of the proceedings has violated the law or done something wrong. Such claims are often made by victims, witnesses and investigating officers.
Annulment	A court order that sets aside a marriage, declaring that it never existed.
Appeal	The process whereby a person dissatisfied with a court's decision takes the case to a higher court for review..
Appellate court (Appeals court)	A court in which appeals from trial court decisions are heard.

Arson	The deliberate and malicious burning of property.
Assault	An intentional physical attack, or a threat of attack with the apparent ability to carry out the threat so that the victim feels in danger of physical attack or harm.
Bail	Money or property put up by the accused or his or her agent to allow release from jail before trial. The purpose of bail is to assure the court that the defendant will return for trial.
Battered wives/ husbands	Any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being by his or her spouse.
Booking	The formal process of making a police record of an arrest.
Breach	Failure to keep a promise or perform a duty.
Breach of contract	Failure to carry out the terms of a contract.
Breach of peace	Violation or disturbance of the public tranquility and order.
Broker	An agent who negotiates contracts of purchase and sale.
Burglary	Breaking and entering a building with the intention of committing a felony.
Capitol offense	A criminal offense for which the death penalty may be imposed.
Child abuse or neglect	Causing non-accidental harm or threatened harm to a child's physical or mental health or welfare; harm or threatened harm means damage or potential damage to the physical or emotional health and welfare of a child.
Coercion	Forcing a person to act against his or her free will.

Collateral	Money or property given to back up a person's promise to pay a debt.
Common law	Judge-made laws (as opposed to laws made by a legislature or a city or county government). Our common law is based on the legal customs and court decisions of England that were followed in the U.S. judicial system when it was established.
Common law marriage	A marriage created without legal ceremony by a couple living together and publicly presenting themselves as husband and wife.
Compensation	The pay one receives for work done, or for injury sustained.
Complaint	The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute the crime charged.
Conspiracy	An agreement or plan between two or more persons to commit a crime.
Constitution	A written document containing the most basic rules of a society.
Constitutionality	The quality of a law or act of government as being either in violation of or in accordance with rules contained in a constitution.
Contingent fee	A fee stipulated to be paid to an attorney for his services in conducting a suit only in case he wins it.
Conviction	The finding of a person guilty of a crime or wrongdoing.
Creditor	A person who provides credit or who loans money or delivers goods or services before payment is made.

Damages	(1) The injuries or losses suffered by one person because of the fault of another; (2) money asked for or paid by a court order for the injuries or losses suffered.
Decree	An order of the court having the force of law.
Deed	A signed and usually sealed instrument containing some legal transfer, bargain, or contract.
Defamation	Written or spoken expression about a person that is false and damages a person's reputation.
Default	Failure to fulfill a legal obligation, such as failing to make a loan payment or appear in court on a specified time and date.
Defendant	The person against whom a claim is made. In a civil suit the defendant is the person being sued; in a criminal case the defendant is the person charged with committing a crime.
Deferred payment	Payment of principal or interest postponed to a future time; installment payment.
Discrimination	The act or practice of making a difference in treatment or favor on a basis other than individual merit.
Dismissal	The act of putting out of judicial consideration.
Disposition	The final settlement or result of a case.
Divorce	The ending of a marriage by court order.
Due process of law	A course of legal proceedings carried out regularly and in accordance with established rules and principles.
Dun (dunning)	To make persistent demands upon a troublesome creditor for payment.

Duress	Unlawful pressure on a person to do something that he or she would not otherwise do. Duress may be a defense to a criminal charge.
Electioneering	Working for the election of a candidate or party.
Entrapment	An act by law enforcement officials to induce a person to commit a crime that the person would not have committed otherwise. If proven, entrapment is a valid defense to a criminal charge.
Equal protection of the laws	The guarantee that no person or class of persons shall be denied the same protection of the law which is enjoyed by other persons or classes of persons under like circumstances in regard to their lives, liberty, property and pursuit of happiness.
Escrow	Money or property that a neutral party, such as a bank, holds for someone until that person fulfills some obligation or requirement.
Eviction	The action by a landlord of removing a tenant from a rental unit.
Evidence	Something accepted and considered by a court to assist arriving at the truth of a matter, whether it be oral statements of witnesses, documents, physical objects, photographs or recorded data.
Expungement	The cancellation or removal of a criminal or juvenile record.
Extortion	Taking property illegally by force or threats of harm or blackmail.
Federal government	Commonly intended to mean the United States government; but also constituting a form of government in which power is distributed between a central authority and a number of constituent territorial units (states).

Felony	A serious crime for which the punishment may be death or imprisonment for more than one year.
Foreclosure	A proceeding in which a bank or other lender takes a house and sells it if a person fails to make mortgage payments.
Forfeiture	Something to which the right is lost by the commission of a crime or fault or the losing of something by way of penalty.
Forgery	Making a fake document or altering a real one with the intent to commit fraud.
Fraud	Any deception, lie, or dishonest statement made to cheat someone.
Garnishment	The legally authorized means to take a person's money, through payroll deductions or other means in order to pay creditors.
Habitual truant	One who regularly stays out of school without permission.
Homicide	The crime of killing a person.
Immune	Free, exempt; protected from some action, such as being sued.
Impotency	Inability to copulate; as a grounds for divorce when there is incapacity to consummate the marriage.
Incarceration	Confinement in a prison or institution.
Incumbent	The holder of an office.
Interlocutory period	Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.
Judicial precedent	A court decision that may serve as an example or rule to permit or justify a similar decision in a later case of a similar nature.

Judgment	A court's decision on a case.
Landlord	The owner of property who leases or rents space. The company or person that manages the property for the owner.
Legal separation	A situation in which two spouses are separate but still maintain some marital obligations.
Liability	All character of debts and obligations that one is bound in law or justice to perform.
Liable	Obligated according to law or equity; responsible.
Libel	A written expression about a person that is false and damages that person's reputation.
Lien	A claim on some property made by a creditor until a debt is paid.
Majority	(1) The age at which full civil rights are accorded, usually age 21; the status of one who has attained this age, (2) the group or party whose votes preponderate.
Malice	With respect to defamation, it is the mental state one has when one makes a false statement knowing it is false or with reckless disregard for its truth or falsity.
Manslaughter	The unlawful killing of a human being without express or implied malice.
Mayhem	Willful and permanent crippling mutilation, or disfigurement of any part of the body; needless or willful damage.
Misdemeanor	A crime less serious than a felony, punishable by a prison sentence of one year or less.
Mitigate	To make less severe.
Mitigating circumstances	Factors that may lower the seriousness of an offense; the presence of these factors may be considered by the judge or jury.

Mitigation of damages	A reduction of the amount of damages.
Mortgage	A loan in which land or buildings are put up as security.
Negligence	The failure to exercise the care that a prudent person usually exercises.
Ordinances	Laws enacted by city or county governments.
Parole	The release of a convicted offender from custody prior to the end of a sentence of confinement based upon the person's record of behavior while in custody and subject to certain conditions. During the period of parole, the person is closely supervised and may be returned to custody for violating conditions of parole.
Paternity	Of or pertaining to a legal dispute in which an unwed mother accuses a man of fathering her child.
Petition	(1) To file charges in a juvenile justice system; or (2) a request to a court or public official.
Plaintiff	The person who brings (starts) a lawsuit against another person.
Polygamy	Marriage in which a spouse of either sex may possess a plurality of mates at the same time.
Precedent	Court decisions on legal questions that give direction to future cases on similar questions.
Premeditated	Characterized by fully conscious willful intent and a measure of forethought and planning.
Privacy rights	The right to be let alone; the right of a person to be free from unwarranted publicity.

Probation	The action of suspending the sentence of a convicted offender and giving him freedom during good behavior under the supervision of a probation officer.
Probable cause	A reasonable belief, known personally or through reliable sources, that a person has committed a crime.
Promissory note	A written promise to pay on demand or at a fixed future time a sum of money to a specified person.
Prurient interest	Craving, restlessly; lewd, lustful.
Puffing	An exaggerated statement as to the desirability of a product or service.
Rebate	A return of a portion of a payment.
Redress of grievances	Improving conditions that are felt to be wrong or abusive.
Remand	To send a case back to another court or agency for further action.
Rescind	(1) To annul or cancel (a contract) by restoration of pre-existing conditions; (2) to make void (as an act) by action of the enacting or a superior authority.
Restitution	A court order in which convicted persons are required to pay back or otherwise compensate the victim for their crime.
Robbery	The unlawful taking of property from a person's immediate possession by force or threat of force.
Sectarian	Parochial; of or relating to a church.
Secular	Pertaining to things that are not primarily religious.
Security	(1) Something given, deposited or pledged to make certain the fulfillment of an obligation; (2) an evidence of debt or of property (as a stock certificate or bond).

Security deposit	Money that a landlord requires a tenant to pay before moving in, used to cover any damages, cleaning costs, or unpaid rent, if such fees arise.
Slander	Spoken expression about a person that is false and damages that person's reputation.
Standards of the community	Stability, general recognition, and conformity to established practice; a type, model or combination of elements accepted as correct or perfect in a particular locale.
Status offenses	Specific acts that are punishable only when committed by persons under a certain age; use of alcohol and tobacco, truancy, runaway and ungovernable.
Statute	A law enacted by the legislative branch of government.
Summons	A legal notice informing a person of a lawsuit and telling that person when and where to go to court.
Surveillance	Watching or observing a person; used to refer to observations made without that person's knowledge.
Symbolic speech	Modes of expression other than written or oral languages, e.g. gestures, sit-ins, picketing and marching.
Tenant	A person renting property.
Theft	An unlawful taking (as of embezzlement or burglary) of property.
Title	The legal right of property ownership.
Trust deed	An instrument in use in some states, taking the place and serving the uses of a mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.

Unconscionable	Totally unfair and one-sided.
Usury	Charging interest for various types of credit at rates higher than the state's legal limit.
Verdict	A jury's decision on a case.
Waive	To give up some right, privilege, or benefit voluntarily.
Warrant	A paper signed by a judge authorizing some action, such as an arrest or a search and seizure.
Warranty	A guarantee or promise made by a seller or manufacturer concerning the quality or performance of goods offered for sale.